* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 20th December, 2023**

\+ W.P.(C) 13239/2022 & CM APPL. 40117/2022 & CM APPL. 40119/2022

PARAMEDICAL TECHNICAL STAFF WELFARE ASSOCIATION OF MCD ..... Petitioner

Through: Mr. C. M. Jha, Advocate (Through VC)

versus

GOVT. OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi, Ms. Jyoti Tyagi, Ms. Manisha and Mr. Hitanshu Mishra, Advocates for DOE

Mr. Sanjay Vashishtha, Standing Counsel with Mr. Vishal Kumar, Advocate for MCD

Mr. Umesh K. Burnwal, SPC for UOI

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present petition has been filed under Article 226 of the Constitution of India seeking the following reliefs:

> *"a) Issue a writ of mandamus or any other appropriate writ/direction/order to Respondent 2 to Quash the order 18.08.2022.*
>
> *b) Issue an order or direction to the Respondent 2 to provide alternate method of attendance.*

c) Issue an order or direction to the respondent to launch secure application which should be available on official play store.

d) Pass any other or further order which this Hon'ble court may sympathetically deem fit and proper in the interest of justice."

FACTUAL MATRIX

2. The petitioner Association in the instant writ petition is a registered union representing the interests of "para medical technical staff" employed by respondent no. 2/Municipal Corporation of Delhi ('MCD' hereinafter). Respondent MCD issued an order dated 18th August, 2022 ('impugned order' hereinafter) whereby it directed that the salaries of all employees of the RBIPMT and MVID hospitals (which includes members of the petitioner Association) would be released only after they marked their daily attendance through the MCD SMART App ('the Application' hereinafter) via smart phones. The relevant part of the order reads as follows:

"In compliance with circular no DCA/(HQ)/MCD/2022-23/D-193 dated 01.08.22 all employees of RBIPMT and MVID hospitals are hereby again directed to ensure marking of their daily attendance on MCD SMART App. If any employee faces any difficulty in marking attendance through MCD App they can approach IT dept 24th floor civic center to resolve the issue.
As per the above circular salary of august 2022 paid in September will be released based on attendance on MCD SMART APP attendance."

3. Relevant portion of the earlier order dated 1st August, 2022 reads as follows:

> *"All DDOs should record a certificate on the salary bill that the same has been prepared as per the attendance marked on the MCD Smart Mobile App. The Pay & Accounts Offices are directed to release the salary for the month of August, 2022 paid in September, 2022 only on the certificate recorded by DDOs on Salary Bills."*

4. The petitioner Association made a written representation to respondent MCD on 5th August, 2022 assailing this order and requesting that the respondent address the various grievances raised by its employees regarding the feasibility of compliance with these orders.

5. Aggrieved by the lack of action taken by the respondent, the petitioner has preferred the instant petition.

6. During the course of proceedings, this Court *vide* interim order dated 12th September, 2022 and directed respondent MCD to ensure that the salaries of employees of the petitioner Association are not withheld on account of them being unable to mark their attendance in the MCD SMART App. The relevant paragraph of the interim order is reproduced below -

> *"8. Till the next date, the respondent no.2 will ensure that the salaries of the employees of the petitioner/union is not withheld on account of their not being able to mark their attendance in the MCD SMART App through a smart phone."*

SUBMISSIONS

(on behalf of the petitioner)

7. The learned counsel on behalf of the petitioner submits that respondent MCD issued the impugned order/policy without looking into its feasibility and conducting a trial run of the new app-based attendance

mechanism. To use the MCD SMART App, all employees are required to have a smart phone with the latest updates and access to a stable internet connection.

8. It is submitted that most employees to whom the said policy is being implemented belongs to Group C and D categories who do not have financial stability. These employees do not have smart phones and do not know how to operate the MCD SMART App on their phones.

9. It is further submitted that there is no stable Wi-Fi facility in the hospitals and there is a network issue at the premises, thus the employees are unable to use the Application thereby, leading them being marked absent from the duty.

10. It is submitted that the MCD SMART App is not available on the official Play Store or any official app store and is not a secure app and due to its unsecured source, phone data and bank account information of many employees could be accessed through it. Therefore, forcing the employees to install the said application compromises their security and risks the fundamental right to privacy of the employees.

11. It is submitted that no alternate methods of recording attendance have been provided to the employees. On several occasions the employees have requested the respondent to install/repair a fingerprint scanner to record the attendance; however, the respondent has not taken any action.

12. Hence, it is prayed by the petitioner that the present writ petition may be allowed and relief may be granted, as prayed.

(on behalf of the respondent)

13. *Per Contra*, the learned counsel on behalf of the respondents vehemently opposed the present petition submitting to the effect that the

Application has been introduced to inculcate a sense of discipline in employees, given that their work is in the healthcare sector and is patient-centric where availability of staff is of prime concern.

14. It is submitted that the employees may mark their attendance in multiple ways and therefore there is no need for the employees to necessarily purchase smart phones as they can mark their attendance through their supervisor's phone.

15. It is submitted that another employee as a "parent employee" can also mark the attendance of employees mapped with them through their phone. Thus, it is not necessary for all employees to own a smart phone.

16. It is submitted that the application has a single menu flow for marking attendance and does not require any specialized training. Furthermore, a manual for using the application is available on the website itself.

17. It is submitted that the Application has been specially designed and developed by the National Informatics Centre (NIC), which is a body under the MEITY, Government of India. The Application is hosted on the NIC Cloud platform and security audits for it have been completed by CERT-in agencies.

18. It is submitted that this Application has been being used for more than 2 years by other employees of respondent MD and no complaints have been received so far.

19. It is submitted that the Government of India has introduced an app-based attendance scheme for NREGA workers through the National Mobile Monitoring System (NMMS) App where worksite supervisors are

responsible for recording attendance and geo-tagged photographs of the workers through the app.

20. It is also submitted that the state of Telangana has also introduced GPS-based attendance for its teaching and non-teaching staff in government and local body schools. Additionally, it is submitted that the Jammu and Kashmir government has introduced a GPS-based attendance system and online feedback form for teachers which is working fine in the respective states.

Hence, it is prayed by the respondent that the present writ petition be dismissed and the petitioner be imposed with heavy costs to dissuade unwarranted litigation.

ANALYSIS AND FINDINGS

21. Heard the learned counsels for the parties and perused the records. This Court has given its thoughtful consideration to the submissions made by the parties.

22. It is the case of the petitioner that the app based attendance system as introduced by the respondent MCD has proven bane to the employees as most of the employees to whom the said system has been implemented belongs to a poor strata and are not financially capable to purchase smart phones, therefore, making it mandatory to mark their attendance through the said system has violated multiple rights of the said employees.

23. In their rival submissions, the respondent MCD has countered the said arguments by stating that the employees are nowhere required to purchase the smart phones, rather have also been given an option to mark their attendance through their supervisor or through another employee. The learned counsel for the respondent MCD further argued that the said

policy has been introduced to inculcate discipline among the employees and nowhere violates any right of the petitioner rather helps the department in ensuring availabilities of the staff in the hospitals.

24. Therefore, in light of the said contentions, this Court needs to adjudicate the present petition on the issue of whether this Court can interfere in policy decisions taken by the executive, and if yes, whether the present policy is unfair or arbitrary and ought to be quashed owing to alleged violation of the rights of the petitioner.

25. Before delving into the issue at hand, it is pertinent for this Court to revisit the settled position of law regarding issuance of the writ of mandamus and how the judicial dictum has dealt with the nature and scope of the said writ with regards to the interference in the executive's decision.

26. The writ of mandamus has been defined in ***Halsbury Statutes of England*, Vol 11, (3rd Edition) p. 84** in the following manner:

> *"The order of mandamus is an order of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice, and accordingly, it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right"*

27. On perusal of the aforesaid definition, it is clear that the writ of mandamus is a command issued from the courts to direct the Subordinate Courts, Organizations or the State to perform a duty which they are

bound to do by virtue of the nature of the public office they hold. Having said so, it is imperative for this Court to look into the settled position of law regarding interference of the judiciary in a policy decision.

28. The Hon'ble Supreme Court and this Court has dealt with the said aspect time and again and therefore the position of law regarding interference of the judiciary in policy making is settled. In ***federation Haj PTOS of India v. Union of India*, (2020) 18 SCC 527,** the Hon'ble Supreme Court delved into the said aspect and held as under:

> ***"18.*** *Going by the aforesaid considerations, the respondent has carved out the categories of HGOs on the parameters of experience as well as financial strength of HGOs. Such a decision is based on policy considerations. It cannot be said that this decision is manifestly arbitrary or unreasonable. It is settled law that policy decisions of the executive are best left to it and a court cannot be propelled into the unchartered ocean of government policy (see Bennett Coleman & Co. v. Union of India [Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788]). Public authorities must have liberty and freedom in framing the policies. It is well-accepted principle that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the courts to consider competing claims and to conclude which way the balance tilts. Courts are ill-equipped to substitute their decisions. It is not within the realm of the courts to go into the issue as to whether there could have been a better policy and on that parameters direct the executive to formulate, change, vary and/or modify the policy which appears better to the court. Such an exercise is impermissible in policy matters. In Bennett Coleman case [Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788], the Court explained this principle in the following manner : (SCC p. 834, para 125)*

"125. ... The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietor to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the unchartered ocean of governmental policy."

19. *The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide, the Court would interfere with such policy decisions. No such case is made out. On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupesh kumar Sheth [Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupesh kumar Sheth, (1984) 4 SCC 27] : (SCC p. 42, para 16)*

"16. ... The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the

sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution."

20. *We may also usefully refer to the judgment in State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] . In this judgment, licence to run a liquor shop granted in favour of A was challenged as arbitrary and unreasonable. The Supreme Court held that there was no fundamental right in a citizen to carry on trade or business in liquor. However, the State was bound to act in accordance with law and not according to its sweet will or in an arbitrary manner and it could not escape the rigour of Article 14. Therefore, the contention that Article 14 would have no application in a case where the licence to manufacture or sell liquor was to be granted by the State Government was negatived by the Supreme Court. The Court, however, observed : (SCC p. 605, para 34)*

"34. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or mala fide."

29. In ***Hero Motocorp Ltd. v. Union of India*, (2023) 1 SCC 386,** the Hon'ble Supreme Court revisited the settled position of law regarding the issuance of the writ of mandamus and referred to the earlier decisions whereby the scope of the said writ was discussed at length. The relevant part of the said order are reproduced herein:

> *"**74.** This Court in Bihar Eastern Gangetic Fishermen Coop. Society [Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh, (1977) 4 SCC 145] had an occasion to consider when a writ of mandamus could be issued. This Court held that : (SCC pp. 152-53, para 15)*
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> > *"15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (See Lekhraj Sathramdas Lalvani v. N.M. Shah [Lekhraj Sathramdas Lalvani v. N.M. Shah, (1966) 1 SCR 120 : AIR 1966 SC 334] , Rai Shivendra Bahadur v. Nalanda College [Rai Shivendra Bahadur v. Nalanda College, 1962 Supp (2) SCR 144 : AIR 1962 SC 1210] and Umakant Saran v. State of Bihar [Umakant Saran v. State of Bihar, (1973) 1 SCC 485] . In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an*

obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

75. *It can thus be seen that unless the appellants show any statutory duty cast upon the respondent Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in K.S. Jagannathan [Comptroller & Auditor General of India v. K.S. Jagannathan, (1986) 2 SCC 679 : 1986 SCC (L&S) 345] as under : (SCC pp. 692-93, para 20)*

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government

or the public authority should have passed or given had it properly and lawfully exercised its discretion."

76. *It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion mala fide or on an irrelevant consideration.*

77. *This position was again reiterated by this Court recently in Bharat Forge [Union of India v. Bharat Forge Ltd., (2022) 17 SCC 188 : 2022 SCC OnLine SC 1018] as follows : (SCC paras 18-19)*

"18. Therefore, it is clear that a writ of mandamus or a direction, in the nature of a writ of mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise form a statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public duty in a statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority.

19. A writ of mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court."

30. Therefore, on perusal of the aforesaid judgments it is crystal clear that the Courts do not need to embark upon the independence of decision making powers of the executive, rather can only look into the same if the said policy under challenge is arbitrarily manifested.

31. The aforesaid paragraphs also clarifies the limited role of the judiciary with respect to the review of a policy introduced by the executive and the same could only be permitted until and unless the said policy is completely arbitrary.

32. The term 'arbitrarily manifested' has been dealt with by the Hon'ble Supreme Court and the settled position regarding the same is that the threshold for invalidating plenary legislation or an executive decision needs to be met for the interference of the judiciary.

33. In the present case, the said executive decision is related to the employees working in the health sector where indiscipline by the said employee can directly affect the effective functioning of the hospitals run by the respondent MCD.

34. As per settled position of law, it is imperative for the Courts to tread lightly in case of policy decisions taken by the State when the decisions relate to the health sector. The Hon'ble Supreme Court in ***Jacob Puliyel* v. *Union of India*, 2022 SCC OnLine SC 533**, while examining certain decisions pertaining to health sector had observed that in their exercise of judicial review, courts should not ordinarily interfere with policy decisions unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness, etc. The relevant portion of the said judgment read as under:

"20. *The Minister for Workplace Relations and Safety passed COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021, by which it was determined that work carried out by certain police and defence force personnel could only be undertaken by workers who have been vaccinated. Three police and defence force workers who did not wish to be vaccinated sought judicial review of the said order before the High Court of New Zealand (hereinafter, the "**NZ High Court**"). While adjudicating the dispute, the NZ High Court in Ryan Yardley (supra) expressed its opinion that the choices made by governments on their response to COVID-19 involve wide policy questions, including decisions on the use of border closures, lockdowns, isolation requirements, vaccine mandates and many other measures, which are decisions for the elected representatives to make. The NZ High Court made it clear that the Court addresses narrower legal questions and the Court's function is not to address the wider policy questions. While referring to the evidence of experts, the NZ High Court stressed on the institutional limitations on the Court's ability to reach definitive conclusions but clarified that the Court must exercise its constitutional responsibility to ensure that decisions are made lawfully. While relying upon a judgment of the Court of Appeal of New Zealand in Ministry of Health v. Atkinson, the NZ High Court held that the Crown has the burden to demonstrate that a limitation of a fundamental right is demonstrably justified. We have come to know that in the time since the judgment in this matter was reserved, the decision of the NZ High Court in Ryan Yardley (supra) has been appealed by the Government of New Zealand before the New Zealand Court of Appeal.*

21. *We shall now proceed to analyse the precedents of this Court on the ambit of judicial review of public policies relating to health. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide,*

unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary.

22. *This Court in a series of decisions has reiterated that courts should not rush in where even scientists and medical experts are careful to tread. The rule of prudence is that courts will be reluctant to interfere with policy decisions taken by the Government, in matters of public health, after collecting and analysing inputs from surveys and research. Nor will courts attempt to substitute their own views as to what is wise, safe, prudent or proper, in relation to technical issues relating to public health in preference to those formulated by persons said to possess technical expertise and rich experience. Where expertise of a complex nature is expected of the State in framing rules, the exercise of that power not demonstrated as arbitrary must be presumed to be valid as a reasonable restriction on the fundamental right of the citizen and judicial review must halt at the frontiers. The Court cannot re-weigh and substitute its notion of expedient solution. Within the wide judge-proof areas of policy and judgment open to the government, if they make mistakes, correction is not in court but elsewhere. That is the comity of constitutional jurisdictions in our jurisprudence. We cannot*

evolve a judicial policy on medical issues. All judicial thought, Indian and Anglo-American, on the judicial review power where rules under challenge relate to a specialised field and involve sensitive facets of public welfare, has warned courts of easy assumption of unreasonableness of subordinate legislation on the strength of half-baked studies of judicial generalists aided by the adhoc learning of counsel. However, the Court certainly is the constitutional invigilator and must act to defend the citizen in the assertion of his fundamental rights against executive tyranny draped in disciplinary power.

23. *There is no doubt that this Court has held in more than one judgment that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since decisions on policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. However, this does not mean that courts have to abdicate their right to scrutinise whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record. In Delhi Development Authority (supra), this Court held that an executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review. It was further held therein that the policy decision is subject to judicial review on the following grounds:*

a) if it is unconstitutional;

*b) if i**t** is dehors the provisions of the Act and the regulations;*

c) if the delegatee has acted beyond its power of delegation;

d) if the executive policy is contrary to the statutory or a larger policy."

35. On perusal of this judgment, it is clear that this Court has limited power to interfere in public policy decisions, particularly those taken on matters relating to the public healthcare system, and can only do so when the policy is manifestly arbitrary.

36. Therefore, the power conferred to this Court under writ jurisdiction is confined to the aspect of analysing and setting aside a provision which is wholly beyond the scope of regulation-making power, inconsistent with existing laws, or in violation of constitutional provisions.

37. In light of the same, the limited question before this Court is whether the introduction of the application for marking attendance of the employees working in the Health care system of the respondent MCD is in contravention to the already introduced laws or the Constitution of India.

38. The employees of the public entity operate under the rules and regulations established by their parent employer, namely, the Government. Oftentimes, these employees encounter situations where they disagree with the formulated rules aimed at improving the system. Despite their reluctance and attempts to resist the implementation of such policies, it is crucial for these individuals to consider the broader perspective and recognize the necessity behind the introduction of these policies.

39. A similar situation came up before the Madras High Court in the case of ***R. Annal v. State of Tamil Nadu*** **2019, SCC OnLine Mad 1272**

where the petitioner had challenged introduction of mandatory Aadhaar Enabled Biometric Attendance System for employees working in Government or Government aided High Schools or Higher Secondary Schools.

40. After analysing the issues in details, the Madras High Court had dismissed the said petition and held as under:

> *"**16.** The concept of public employment in the Government is of contractual in nature. The Public servants while accepting the offer of appointment, made a declaration that they will abide by the Service Rules and other conditions imposed by the Government of Tamil Nadu for the betterment of the Administration.*
>
> ***17.** Undoubtedly, the Right to Privacy is to be protected. However, such right is subject to the performance of duties and responsibilities towards the public by a public servant.*
>
> ***18.** The details of the public servants are very much recorded in Service Registers also. The identifications are also available. In order to ensure better system to secure prompt attendance of these Teachers and Non Teaching staffs in Government Schools, the Government thought that Aadhar Enabled Biometric Attendance System will be of greater support to monitor any indiscipline or otherwise, if any by the Teachers and non-teaching staff working in Government Schools. In a growing indiscipline amongst the public servants, it necessitated the State Government to introduce such technology for the purpose of improving the efficiency level in the public administration. The Aadhar Enabled Biometric Attendance System is systematically being implemented by the Government of India and by the Hon'ble High Courts and by other public institutions across the country. When the Government thought fit to introduce such an advanced system for the purpose of ensuring the Full proof attendance system in public services, the same*

cannot be objected by none other than a Teacher working in a School, who is expected to be a Role Model for the young children. Probably, the petitioner would have thought that the Right to Privacy will provide her a benefit of avoiding the Aadhar Enabled Biometric Attendance System. The Right to Privacy is to be protected and such a Right to Privacy cannot be extended, so as to curtail the Government from introducing Aadhar Enabled Biometric Attendance System in Government Schools, which would provide a better administration as far as the Education Department is concerned."

41. The High Court further held that a system introduced to improve the efficacy of public administration could not be questioned and if a person wished to continue as a public servant, then they would be bound to abide by service conditions introduced by the Government in public interest. The relevant paragraphs are reproduced hereunder:

*"**20.** Any better system by adopting the best technology, cannot be objected by a person, who is none other than the Teacher working in the School. If at all, the Teacher is not possessing the Aadhaar Number, then it is for her to register her name and get an Aadhaar Number and accordingly, attend the School through Aadhar Enabled Biometric Attendance System. Contrarily, the writ petitioner cannot say that she cannot be compelled to get an Aadhaar Number for the purpose of attending the School. The choice is of the writ petitioner. If the writ petitioner is willing to continue as a public servant, then she is bound to abide by the Service Conditions. If she is not willing to undergo such system, which all are introduced by the Government in the public interest, then the petitioner has to take a decision, whether to continue in service or to leave the service. However, the petitioner cannot object such a system introduced for the improvements of the School Administration.*

> ***21.*** *The introduction of such system are done in a public interest and to improve the efficiency level of the public administration. This being the policy decision taken by the Government, the writ petitioner cannot question the same and it is for her to take a decision either to continue her services or to leave the job. Contrarily, the petitioner cannot question the very policy of the Government, which is introduced in the public interest to improve the public administration, more specifically, in Government Schools."*

42. Upon perusal of the relevant paragraphs, it is clear that the Court adjudicated upon whether an order mandating an Aadhaar-Enabled Biometric Attendance System for employees working in Government or Government aided High Schools or Higher Secondary Schools ought to be quashed.

43. As evident in the foregoing paragraphs, the Court held that public servants, while accepting an offer of appointment, make a declaration that they will abide by Service Rules and other conditions imposed by the Government for the betterment of the administration.

44. In the present case, the implementation of the application is intricately connected to the initiative of instilling discipline and ensuring accountability among employees, particularly in terms of attendance. This decision can be unequivocally characterized as a measure taken for the improvement of the healthcare system.

45. The significance lies in recognizing that the dedicated contributions of the staff are paramount to the functionality of the system. Without such measures to ensure attendance and accountability, there exists a real risk of systemic failure in the healthcare sector.

46. Thus, the decision to introduce the application is a strategic and necessary step toward fortifying the health care system and sustaining the vital contributions of the staff and therefore, the same cannot be interfered with by the Court since, the same is not illegal.

47. Upon a brief examination of whether the policy can be deemed 'arbitrary,' this Court agrees with the view taken by the Madras High Court in the case of ***R. Annal v. State of Tamil Nadu*** **(Supra)** that if the employees choose to remain in their service, they are inherently obligated to adhere to the established Service Conditions.

48. It is crucial to emphasize that employees cannot reasonably object to a system implemented for the enhancement of hospital administration. The decision to introduce such systems is rooted in the broader public interest and the improvement of overall healthcare services to the citizens of the country. Therefore, employees are expected to align with these measures, recognizing the inherent linkage between compliance and the smooth functioning of essential public services.

49. Another aspect raised in the said case was similar to one raised in the present petition, i.e. infringement of the Right to Privacy. While answering the said contention, the Court held that even though the Right to Privacy is to be protected, the said Right is subject to the performance of duties by a public servant.

50. In the present case as well, the petitioner association has raised the said contention where development of such an application has been questioned and termed as an unsafe source.

51. In the rival submissions, the said contention has been vehemently opposed by learned counsel for the respondent submitting to the effect

that this Application has been specially designed by the National Informatics Centre, a body under the Ministry of Electronics and Information Technology, and security audits for this Application have been completed by CERT-In agencies.

52. Thus, the submission of the learned counsel for the petitioner that the Application is created by an unknown or not secure source is rejected. As there is no apparent risk to the privacy of the employees, this Court does not find it necessary to delve into an analysis of where the right to privacy stands vis-à-vis the public duty of employees.

53. At last, it is pertinent to look into the aspect of introduction of similar system by the various States where the introduction of application has run smoothly for some time.

54. The Counter filed by the respondent MCD already mentions smooth functioning of the similar system in the state of Telangana and Union Territory of Jammu and Kashmir where the applications was launched for marking attendance in various Departments.

55. Apart from the said States, the state of Jharkhand and Andhra Pradesh also introduced such system where marking of attendance of the Government employees has been mandated through the application only.

56. The introduction of such a system is to ensure transparency and efficiency of working by state departments and timely delivery of service and welfare schemes to the public, an objective desirable for any public entity. Therefore, this Court does not deem it necessary to term the introduction of similar system in the respondent MCD as illegal.

57. Furthermore, the advancement of technology has helped the public sectors in many ways, however, protesting against such advancement only

shows the intent of the employees to not comply with the orders of the respondent MCD.

58. As per material on record, the employees have been given multiple methods of marking their attendance, including through smart phones owned by their supervisor or through any other employees through whose application they have been mapped. Thus, the contention regarding forcing the employees to purchase a smart phone is rejected.

59. Another contention raised by the learned counsel for the petitioner is that the said employees are forced to learn the usage of the application on their own, however, the order dated 18th August, 2022, as issued by the respondent MCD clearly provides for assistance of the technical staff in case of any need and also to visit the website to obtain necessary details of operating the application.

60. Therefore, the petitioner Association cannot submit that employees are being coerced into downloading an application or that they are arbitrarily prevented from recording their attendance due to the lack of access to smart phones or technical knowledge.

61. The learned counsel for the respondent has also submitted that this application has been in use for more than two years by other employees without any complaints having been received for the same. Thus, the submission that the policy is manifestly unfair is rejected, and this Court does not find any cogent reasons for striking down the impugned policy decision.

62. The foregoing paragraphs clearly lead to the rejection of the petitioner's contentions. It is a settled position of law that this court's power to interfere in the policy decisions of the executive is limited,

particularly when the policy concerns a matter of public health. It is not the place of this court to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser. This court can interfere in such policy decisions only when they are arbitrary or unfair.

63. The present matter concerns the mandatory introduction of the MCD SMART Mobile Application for marking the attendance of all employees of RBIPMT and MVID public hospitals. These employees work in the healthcare sector. As submitted in the counter-affidavit on behalf of respondent no. 2, the primary objective of this application is to inculcate a sense of discipline in employees, which is essential considering that their nature of work is highly patient-centric.

CONCLUSION

64. The health care system run by the public authorities is one of the most pivotal concerns for any nation where the administration aims to provide all the necessary services at disposal of the beneficiaries. Therefore, the absence of workers entrusted to run the said system can create a situation which can hamper the effective functioning of the entire system.

65. The present policy regarding the marking of attendance on the MCD SMART Application cannot be termed as arbitrary or unfair mainly for two reasons, *Firstly*, purchasing/possession of a smart phone is not a compulsion for all employees as the employees have alternate methods to mark their attendance and can opt to mark themselves present either

through the supervisor or any other employee's phone. *Secondly*, the issue of privacy and security does not arise as the Application was not developed by an unknown source, rather by a body under the Ministry of Electronics and Information Technology where the said body has already done due diligence with regards to the potential threats of security breach.

66. Accordingly, the instant petition is devoid of merits and is dismissed.

67. Pending applications, if any, also stand dismissed.

68. The Judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 20, 2023
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