

**THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT DELHI-1
I.D. No.150 /2022**

**Dinesh Kumar & Gupta 20 others Vs. Dr. Baba Saheb Ambedkar
Hospital**

Misc App.No. 31 / 24 (complaint u/s 33 ID Act)

*Sh. Rajiv Agarwal, Siddharth Sapra, Navalendu Bhushan,
Advocates, A/Rs for workmen
Ms. Arpita Mandal, Advocate for Management*

ORDER

**Justice Vikas Kunvar Srivastava (Retd.)
(Presiding Officer)**

Prologue

1. This order is intended to decide prayer of workmen in the nature of interim protection against advertisement (vacancy notice) issued by the management on 12.01.2024 pending the present industrial dispute before the tribunal since 2022. In Complaint under section 33 of the I.D. Act, 1947. The protection is sought in terms that advertisement no. 4/24 (vacancy notice) dated 12.01.2024 be stayed to the extent of post of nursing officers and /or to reserve a total of 8 posts of nursing officers till the pendency of present industrial dispute. The said advertisement is issued by Deputy Secretary (P&P-1) DSSSB, Government of NCT of Delhi purporting recruitment of paramedical staffs.

2. The present Industrial Dispute by concerned workmen Dinesh Kumar Gupta & 20 others had already been raised through Labour Union “Hospital of Municipal Employees Union” before the labor authorities in relation to regularization in services on 07.12.2021 as they after having been duly appointed and posted are working as paramedical staffs in said Hospital continuously and uninterruptedly since their initial appointment in 2001- 2007 till date. On failure to conciliate before labor authority the same after having been referred by Appropriate Government for adjudication to this tribunal is

registered and pending presently as I.D. case no. 150 of 2022 since 06.07.2022
The industrial dispute as scheduled in the letter of reference L -
42011/78/2022IR (DU) dated 24.03.2022 is reproduced here in below-

“Whether demand of Hospital Employees Union vide letter dated 07.12.2021 in respect of Shri Dinesh Kumar Gupta & 20 Others (list attached) to the management of Dr. Baba Saheb Ambedkar Hospital, Delhi under Department of Health & Family Welfare, Govt. of NCT of Delhi for regularization of their services with retrospective effect from their initial date of joining into the employment and payment of the entire difference of salary on the principle of “Equal Pay for Equal Work” from their initial joining and all consequential benefits thereof, is proper, legal and justified? If yes, what reliefs are the disputant entitled to and what directions are necessary in this respect?”

3. The material facts raising the present industrial dispute are that, workmen though appointed on vacant posts through an open competitive written examination and interview from amongst candidates who fulfilled eligibility criterion of staff nurse followed by medical test and police verification in accordance with prescribed recruitment rules. The work assigned to them is regular, permanent and perennial in nature, still today a number of posts are lying vacant then also, they are treated merely contractual employees and paying lesser remuneration than those doing identical works in similar working condition. They are retained as such without permanence in service and regularization. The practice of the management of employing the concerned workmen in work against posts permanent in nature on contract basis even long after the continuous service more than 240 days, in itself tantamount to unfair labour practice as defined under section 2(ra) read with item no 10 of fifth schedule of the Industrial Dispute Act,1947. Management in utter violation of Article 14 of the Constitution of India illegally discriminate the clamaints with their counterparts in regular service by not following the principle of equal pay for equal work and in violation of section 4 of the Equal Remuneration Act,1976 . The concerned workmen are working for more than 10 years and got entitlement even in terms of the decision of the Supreme Court in the case **Secretary State Of Karnataka Vs. Uma Devi, (2006) 4 SCC 1**. On the record several office orders issued from time to time with prior approval of the finance department of Government of NCT Delhi are placed by the workmen which on perusal obviously tend to establish that workmen concerned were duly recruited

against sanctioned and vacant posts of staff nurse with financial approval from the department of finance and they are retained in work on those post as such even for a long say more than a decade by issuing letters of extension of their services. Written statement as against the statement of claim is filed by the management and reply to the complaint opposing the prayer of interim relief is quickly submitted on 11.03.2024. Management submits that the dispute raised in the present matter comes within the jurisdiction of Central Administrative Tribunal (CAT) being a service dispute against Department of Health and Family Welfare, Govt. of NCT Delhi. They denied the jurisdiction of CGIT on this score only.

4. This would be important to note that the above plea of jurisdiction is taken by the management without specific pleading in the written statement. Even in their instant reply/objection as to the prayer of interim relief the claimants are not specifically denied to be “workmen”, the dispute is not denied to be “Industrial Dispute” nor the establishment of management is denied in relation to the work assigned to claimants is “Industry” in terms of definition given in sections 2(s), 2(k) and 2(j) of the Industrial Dispute Act, 1947. The plea as to the jurisdiction of two forums of law namely CAT and CGIT are seems to have taken evasively and half-heartedly. However, right of the management shall stand reserved and in future when the plea is taken in pleading a preliminary issue will be framed and decided on merit.

5. The management submits that pursuant to the judgement of Delhi High Court in **Sonia Gandhi & Others Vs. Govt. of NCT of Delhi** dated 6 November 2013 Government has assessed and created for filling up through DSSSB for 1507 posts from 6.11.2013 to October 2017. Contractual employees engaged in the Health and Family Welfare of GNCTD were given age relaxation in the Recruitment Rules which continued for 5 years for all such posts. The contractual staff had already availed opportunities given from 2011 and onward. Government has further decided to give one time age relaxation to the contractual employees of all departments for the number of years they have worked maximum up to 5 years vide office memo dated 11.6.2019 and 30.01.2024. It is stated that office memo dated 11.10.2020 provides that a contractual employee in Health Department as on 26.11. 2013 could participate in the regular selection exam without any age bar. It is informed that similar

issue has been raised before the High Court which has refused to stay the advertisement *vide* order dated 29.8.2023 in WP(C) No.12117/2023 & 47651/2023.

ARGUMENTS

6. The instant reply of the management opposing the apprehension of concerned workmen and their prayer consequent thereupon to grant interim protection when taken into consideration it is noticed that fact of recruitment, selection and appointment of workmen concerned against sanctioned and vacant posts of nursing officer was made long ago in the year 2001-2007 on contract basis following the prescribed recruitment process and they are kept retained as such since then continuously is not denied hence admitted. The issue for adjudication of their right to be regularized would be whether they have regularized to compete with direct applicants under the advertisement in question or shall be given benefit of longevity of continuous service even much more than 240 days that the ID Act requires because they have already fulfilled the eligibility criteria and appointed following the prescribed procedure, Moreover, they have been given extension of their services since more than 10 years on posts of permanent nature with satisfaction of competent authorities. The workmen apprehend risk of loss of employment as the success in competition may depend on their fortune after lapse of valuable long portion of life in the service of the management.

7. It is argued by the learned Sh. Rajiv Agarwal. Advocate, that the subject matter of the present dispute referred by the government for adjudication pertains to the claimant's demand of his regularization in service. The subject matter of the dispute its thus, 'right' accrued to the contract basis workman for seeking status of permanent employee by regularization in service as they are continuously working in the management since the date of his initial joining till now discharging duties on the post of nursing staff.. In other words the subject matter is, "terms and conditions" of service, like continuous service much more than required under the law 240 days. The advertisement in issue includes direct recruitment on posts of nursing officers. The workmen concerned are in apprehension of imminent danger to employment, that someone so recruited shall replace them and their services shall be ceased off, before the tribunal

adjudicates the dispute and pass a possible award in the matter of regularization. In this way the claimants would be thrown out of job which is the source of livelihood for them and family too. Learned counsel impressed, to stay the operation and enforcement of the advertisement in issue meant to directly recruit the staffs as required to the institution. However, he neither quotes nor refers any provision to suit the prayer for such an ad interim stay, nor relied any case law propounded by the Apex court or our High Courts.

DISCUSSION

8. Section 11(3) of the Act provides, the tribunal shall be deemed to conduct judicial proceeding while making any enquiry, or investigation under the Act. Thus, when tribunal assumes power to conduct judicial proceedings sitting in a quasi-judicial jurisdiction, it would have to exercise sound judicial discretion to secure the ends of justice, where the provisions of the Act and Rules there under are silent but subject to the limitation that the same would not be in derogation, repugnancy or opposed to any express provision of the Act and Rules. I, must say, there is no express prohibition to issue an interim order in fit circumstances to secure the end of justice.

9. Moreover, the Act itself, to prevent any untoward incident with regard to the subject matter of an industrial dispute during it's pendency before the tribunal for adjudication, has very stringent prohibitions mandated against the employer in section 33 of the Act. Section 33 of the Act is captioned as, conditions of service, etc., to remain unchanged under certain circumstances during the pendency of proceedings. Though in the instant application no such circumstances are set forth by workmen to exist and simply an 'apprehension' is in his mind that, he might be removed, discharged or terminated from service in the event of direct recruitment under the advertisement in question. But, his apprehension is not to be ignored. The tribunal is competent enough in exercise of it's judicial discretion to secure his services during the pendency of industrial dispute in the wake of the stringent and mandatory prohibitions contained in the section 33 of the Act, so as to ensure the ends of justice. In this regard the judgment of the Apex Court of India delivered in **Hindustan Liver Ltd. Vs. Ashok Vishnu Kate and ors. Reported (1995) 6 SCC 326 AIR 1996 Supreme Court 285**. It is held that *the Central Government Industrial Tribunal*

cum Labour Court will have the power to grant injunction as an incidental power. The concerned Labour Court should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when very strong prima facie case is made out by the complainant appropriate interim orders intercepting the complained order. Such order should not be asked for mere askance by the Labour Courts

10. In the instant matter of Industrial dispute which is regarding claim of regularization and permanence in employment on the basis of prolonged continuous engagement of the claimants as workmen on the posts they held under the industrial dispute Act. A Complaint under section 33 of the Industrial dispute Act is also pending before this tribunal complaining the interruption in terms and conditions by issuing advertisement for direct recruitment of fresh hands.

11. Roots and origin of concept of interim/interlocutory order in the Indian context can be raised from the provision of order 39 rule 1,2 and 3 CPC, which are repository powers to grant interim relief of temporary injunction.. The industrial tribunal cum labour Court exercises a quasi-judicial function in adjudicating the industrial dispute referred to or brought before it but, the adjudication presupposes the tribunal to proceed in judicial manner and discretion. Supreme Court of India has also propounded the same principal in **Colgate Palmolive (India) Ltd. Vs. Hindustan Liver Ltd. (1999) 7 SCC 1, 13, 14 AIR 1999 Supreme Court 3105**, by holding and enumerating the broad parameters that should govern the judicial discretion in passing of interim/interlocutory/temporary orders by Indian Court. In Para 24 of the said judgment it is held;

“We, however, think it fit to note hereinabove certain specific considerations in the matter of grant of the interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunction are as below:

I. *Extent of damages being an adequate remedy.*

- II. *Protect the plaintiff's interest for violation of his rights through, however, having regard to the injury that may be suffered by the defendants by reason therefor.*
- III. *The Courts while dealing with the matter ought not to ignore the factum of the strength of one party's case is stronger than the other's.*
- IV. *No fixed rules or notions ought to be had in the matter of grant of the injunction but on the facts and circumstances of each case the relief being kept flexible.*
- V. *The issue is to be looked at from the point of view as to whether on the refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case.*
- VI. *Balance of convenience even if there is a serious question or prima facie case in support of the grant.*
- VII. *Whether the grant or refusal of the injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise."*

12. An Industrial tribunal cum labor court has incidental power to pass order granting interim relief to the claimant till the passing of final award has already been settled by the Apex Court in the **Hindustan Liver Ltd. Vs. Ashok Vishnu Kate (Supra)** under section 10 (4) and Section 2 (b) of the Act. Section (10) 4 and Section 2 (b) of the Act are respectively reproduced here under for the purpose of easy reference and smoothness in further discussions-

Section 10 (4) "Where in an order referring an industrial dispute to {a labour Court, Tribunal or National Tribunal} under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, {the Labour Court or the Tribunal or the National Tribunal, as the case may be,} shall confine its adjudication to those points and matters incidental thereto."

Section 2 (b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10 A";

13. The words "**...and matters incidental thereto...**" is explained by Supreme Court in Case titled as "**Management of Hotel Imperial Vs. Hotel Workers Union**", AIR 1959 Supreme Court 1342 suggests that there is no bar for an industrial tribunal to grant interim relief, it further suggest that ordinarily the interim relief should not be the whole relief that the party should

get if they succeed finally Para's 21 & 22 of the above judgment are reproduced here under with great regard.

“Para 21. After a dispute is referred to the tribunal under section 10 of the Act, it is enjoined on it by section 15 to hold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate government. An “award” as defined in section 2 (b) of the Act as meaning “an Interim or final determination by an industrial Tribunal of any industrial dispute or of any question relating thereto. “where an order referring and specifying the points of dispute for adjudication, the tribunal has to confine its adjudication to those points and matters incidental thereto; (Section 10(4). It is urged on behalf of the appellants that the tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under section 10 (4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.”

CONCLUSION

14. In the light of discussions made hereinabove in preceding Para's, it would be pertinent to note that industrial dispute referred to this tribunal by appropriate government is with regard to relief of regularization and pending the same for adjudication if terms and conditions of services would be materially changed by the management as workmen apprehend in complaint under section 33 before that the tribunal finally decides and passes an possible award, the prayer for interim relief deserves to be allowed partly with a view to preserve the subject matter of present industrial dispute.

The tribunal does not find any just and reasonable cause to stay the operation and effect of advertisement (vacancy notice) no. 04/24 dated 12.01.2024. However, any appointment made shall be subject to the outcome of the adjudication of the industrial dispute pending before tribunal. For the sake of avoiding complication and ensuring the compliance of prohibition envisaged in section 33 of the I.D. Act the management is expected to reserve at least 21 posts of nursing officer covered under the advertisement in question

till final adjudication of the claim or till further order of the tribunal whichever is earlier.

Justice Vikas Kunvar Srivastava (Retd.)
(Presiding Officer)

Date : 10.04.2024

Sudha Jain