

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM
LABOUR COURT, DELHI -1**

I.D.No. 150/2023

Sh. Salem Khan

Versus

The Registrar, Jamie Milia Islamia

Misc. Application no. 6 of 2023 (Application for stay)

The present industrial dispute case, as captioned above, is pending before this tribunal since 03.01.2022 vide reference dated 29.11.2021 under section 10 of the Industrial Dispute Act, 1947 by the central government. The reference states about the raising of industrial dispute by the "Delhi Labour Union" vide letter dated 11.03.2019, between the daily wager worker the present claimant and the management, a central university namely the "Jamie Milia Islamia" the dispute pertains to the claimant's demand of regularization in the service of management on the ground of his having in continuous service till date right from the initial date of joining in the university management. A statement of claim is filed by the claimant. Written statement in defense by the management is still awaited. This is why the tribunal could not proceed to

adjudicate the Industrial dispute referred to within prescribed time.

However, the claimant has moved before the tribunal a misc. application also with a prayer, in the nature of ad interim relief, to stay the effect and enforcement of advertisement issued by the management intended to recruit directly through a selection procedure for appointment of selected candidates on various teaching and non teaching posts in the university against the management. Reply / objection to the above misc. application as promptly been responded by the management and parties to the dispute impress early disposal.

The management of the central university, "Jamia Milia Islamia" has it's representation in the case through the standing counsel Sh. Pritish Sabharwal, Advocate because the claimant also equally represented through the learned counsel Sh. Rajiv Agarwal, Advocate. Heard the learned counsels.

It is argued by the learned Sh. Rajiv Agarwal. Advocate, 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 daily wager workman for seeking status of permanent

employee by regularization in service as he is continuously working in the management since the date of his initial joining in the year 2000 till now discharging duties the post of helper. 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 60 posts of MTS (multi tasking staffs), the non teaching services like that the claimant hold in the management. The claimant is in apprehension of imminent danger to his employment, that someone so recruited shall replaced him and his services shall be ceased off before tribunal adjudicates the dispute and pass a possible award in the matter of regularization. In this way the claimant shall stand out of job which is the source of livelihood. 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 did neither quotes and refers any provision to suit the prayed ad interim stay, if exists in the Industrial Dispute Act, 1947 nor relied on case law propounded by the Apex court or our High Courts.

The reply/objection to the instant application matters on the subject, but I shall discuss the same a little later. The tribunal’ jurisdiction

are quasi judicial in nature there is special procedure incorporated in the Act for adjudication in accordance with the special Rules of procedures framed under the Act namely the Industrial Disputes (Central) Rules, 1957. Rules of procedures as incorporate in Civil Procedure code, 1908 generally do not apply in the proceedings of matters pending before the industrial adjudicator, except those enumerated day in section 11(3) of the Act and the rule 24 of the Rules of 1957 (Supra) The said section and rule do not have enumerated the section 151 and that of order 39 of the CPC empowering the tribunal to issue ad interim order of prohibitory nature. But, section 11(3) of the Act further 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 pour 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 expressed 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.

Moreover, the Act itself to prevent any untoward incident with regard to the subject matter of an industrial dispute during its 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 the workman 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 of MTS under the advertisement in question., but his apprehension is not to be ignored. The tribunal is competent enough in exercise of its 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.

Come to the reply of the management as against the instant misc. application of the claimant. It is a very gentle reply than that an bitter objection against the prayer, The management in very clear and unambiguous words has admitted the appointment of the

claimant as helper, a non teaching staff in the year 2000 purely on contract basis whose services are being utilized till date as per need by the management. However, his demand of regularization in service is stated, would be subject to the prescribed procedure and eligibility criterion there for. It is also stated that despite the present dispute, the claimant without any prejudice, was given opportunity to appear in the written test held for selection of peon. However, he was not selected.

The reply of the management is supported with affidavit duly sworn by the registrar of the university (management), which contains an undertaking in it's para 7, worth to be quoted here in below-

***“7. It is submitted that the advertisement dated 29.04.2023 is for the fresh posts of the non teaching staff including MTS and if subsequently, the claimant gets regularized, he would be adjusted in the existing posts of MTS and the advertisement dated 29.04.2023 would not have any prejudice on the regularization of the claimant.*”**

Learned council for the management Sh. Prithvi Sabharwal, Advocates, in the course of the argument reiterated and affirmed

the above quoted undertaking of the management.

The above quoted undertaking of the management submitted with affidavit in the course of present deemed judicial proceeding before this tribunal, as put by the management, is a self restraint over it not to prejudice the claim of the claimant for regularization in services through the advertisement dated 29.04.2023 during the pendency of Industrial dispute pending before the tribunal till any possible adjudication regarding regularization and, assurance, to adjust the claimant on one of the existing posts of MTS kept reserved there for. In other words, the management has submitted itself with bonafide and institutional integrity, to strictly adhere with the provisions of section 33 of the Act.

Since a bonafide undertaking given by a party to the suit or proceeding in a judicial proceeding amounts to injunction, the tribunal enjoins the present management with the above terms recorded by it in the light of undertaking. The management shall maintain status quo in terms of it's undertaking till the final adjudication of the Industrial dispute pending in this tribunal or till the further order whichever is earlier.

The instant miscellaneous application of the claimant workman is disposed of accordingly.

The management is directed to submit written statement in defense of the claimant's statement of claimant within four weeks from the date of order. Office is directed to list the matter for framing of issues in the first week of December 2023.

Parties to the dispute shall also submit their list of oral and documentary evidences on the next date of listing.

Justice Vikas Kunvar Srivastava
(Former Judge, All India High Court)
Presiding Officer
October 30, 2023