

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-labour Court-II, New Delhi.
Pronounced from Camp Court at Dehradun

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ID. NO. 109/2022

DATED:- 18.05.2022

Smt. Saraswati & 8 others,
Through- Delhi Parshashan Vikas Vibhag Industrial Employees Union,
Aggarwal Bhawan, G.T Road, Tis Hazari, Delhi-110054. Claimant

Versus

The Chief Electoral Officer, Governmetn of NCT of Delhi,
Old Stephan's College Building, Kashmere Gate,
Delhi-110054. Management

ORDER

This is an application filed u/s 33A of the Id Act by the complainants who are the claimants of Id 18/2022 against the management alleging that the said proceeding is now pending before this tribunal for adjudication on receipt of a reference from the appropriate government to adjudicate on the claim of the workmen for regularization of their service. The facts leading to the said industrial dispute is that pursuant to an advertisement issued by the respondent the complainants had applied for appointment to the post of Data Entry Operator. After going through a due selection procedure they were appointed as DEO in VERC. But the management engaged them on contract basis for 89 days at a time and extending the contract with one day break. The said break was only a paper work and a tactic to deprive the claimants from their lawful rights. Though, the management has the requisite approval and sanction for engagement of the workmen till March 2022 their appointments are being made for 89 days at a time with an artificial break. The work discharged by the claimants is perennial and thus, they demanded regularization of service. Since the management failed to accept the demand of the complainants and other persons standing in the same footing they raised an industrial dispute which in turn has been refereed to this tribunal for adjudication. While the matter stood thus, the claimants apprehended termination and approached the Hon'ble High Court of Delhi in WPC No. 8906 of 2021 seeking an interim protection. The Hon'ble High Court disposed of the said writ petition with a direction that the service of the DEOs would not be terminated till March 2022 and their service condition would not be changed subject to satisfactory performance. Despite the said direction of the Hon'ble High Court the management initiated an action inviting bids from service providers through GEM having the effect of change in service condition of the claimants when an industrial dispute is pending between the parties. The management/respondent issued a tender under GEM by bid dated 02.03.2022 inviting bids from manpower outsourcing services to outsource the services of the complainants of the present proceeding. The complainants could know that the management has taken steps to engage them through contractor which would amount to

terminate their services from the establishment of the respondent and engage them through the contractor which has the effect of change in the service condition during the pendency of an industrial dispute. Thus, they have approached this tribunal with the present application u/s 33A of the ID Act with a prayer that they being the direct employees of the management of Chief Electoral Officer and there being an industrial dispute claiming regularization of service since pending before this tribunal the management without prior permission of the tribunal cannot place their service under the contractor in violation of the provisions of section 33(1) of the Id Act. Citing the judgment of the Hon'ble Supreme Court in the case of **Jaipur Zila Shekhari Bhoomi Vikas Bank Vs. Ram Gopal Sharma and others reported in (2000) 2 SCC page 244** the complainants have stated that in absence of any application u/s 33(2)(b) of the ID Act the management cannot induct a contractor which would amount to change in their service condition pending adjudication of an industrial dispute. The complainants have thus, prayed for a direction to quash/setaside the bid no. GEM/2022/B/19999586 dated 02.03.2022 and direct the management of Chief Electoral Officer to refrain from violating section 33 of the Id Act during the pendency of the Industrial dispute.

Being noticed the respondent appeared, filed written reply alongwith the documents. Argument was heard being advanced by the Ld. A/R for both the parties.

The Ld. A/R for the complainants by placing reliance in the case of Jaipur Zila referred supra submitted that the conditions laid down u/s 33 of the Id Act are to be mandatorily complied and any contravention entails punishment u/s 31(1) of the Act. Since, no application u/s 33 was made by the management before inviting the bid for engaging the complainants through the contractor the same amounts to change in service condition, and the action is liable to be quashed. He has also placed reliance in the case of **Top Security limited vs. Subash Chander Jha (2013) 136 FLR 17 (DEL)** to argue that when no application seeking approval u/s 33(2)(b) of the Act is made by the employer, the employee may make a complaint u/s 33A. He thus, argued that the complainants when engaged after a due selection process directly under the management and claiming regularization, the move of the management for bringing in the contractor amounts to change of service condition and in violation of the provisions of section 33 of the Id Act.

In his reply the Ld. A/R for the management raised objection on the ground of maintainability as well as on the legality of the submissions made by the complainants. The first objection taken is that the complainants have been engaged as DEOs under the District Election Office of NCT Delhi. Hence, this tribunal lacks the jurisdiction of entertaining the application. In reply the Ld. A/R for the claimant/complainants relying upon the judgment of **Municipal Corporation of Delhi vs. Mahavir and another Civil Writ petition 2785 of 2000** decided by the Hon'ble High Court of Delhi argued that Delhi being the Union Territory is to be administered by the President and any administrator appointed is the delegate of the president and thus, the union territory does not qualify the description of a State Government and therefore the Central Government is the appropriate government. The argument as advanced by the Ld. A/R for the complainants supported by the judgment referred supra leads to a conclusion that for adjudication of the

dispute Central government is the appropriate government and this tribunal has the jurisdiction to adjudicate upon the same.

The other argument advanced by the Ld. A/R for the management is that the department of Information and Technology Government of Delhi issued a letter dated 27.05.2021 referring to General Finance Rule 2017 to the respondent. According to this rule it is mandatory to procure all goods and services from Government e-market in accordance to Rule 149 of GFR 2017. In compliance thereto the Chief Election Officer of Delhi issued the letter dated 02.06.2021 to all the District Election Offices for taking action to hire the service of the DEO through a vendor selected through GEM complying the provisions of Rule 149 of GFR on or before 30.06.2021. In the meeting held on 11.08.2021 it was decided that expeditious step in this regard shall be taken. The petitioners and persons standing in the similar footing through various writ petitions approached the Hon'ble High Court of Delhi challenging the procurement of DEOs through a contractor from the GEM Portal. The DEOs who were appointed on contractual basis for 89 days also approached the High Court in the said writ petition. The Hon'ble High Court after hearing the parties passed an order on 25.08.2021 in WPC No. 8498 of 2021 and other connected matters holding that the claim of the DEOs that the contractor cannot be changed is not tenable in as much as the same could impede the working of various departments and also prevent the departments from engaging in competitive bidding. Since, the NIT clearly shows that the existing DEOs are not being replaced and one of the condition of the tender is that all the existing DEOs have to be continued and the management clarified that the wage etc of the existing DEOs since has been prescribed there would be no change in the same due to the NIT.

Basing on this observation of the Hon'ble High Court the Ld. A/R for the management submitted that the complainants are basically the contractual employees working in the premises of the management. Since a policy decision has been taken by the government for outsourcing the goods and services through GEM, the bid has been invited. But all the precautions and safeguards have been provided to maintain the statusquo of the employment and salary of the complainants. The only proposed change is that their contractual service shall be placed under the contractor instead of the respondent which is consequent upon the policy decision of the government. He also argued that the Hon'ble High Court of Delhi while passing the order dated 25th August 2021 in WPC No. 8498 of 2021 and other connected matters have clearly held that the claimants who are basically the contractual employees cannot be said to have any inherent right to claim that the contractor cannot be brought in nor their service can be placed under the contractor. The Ld. Counsel for the respondent further argued that the Hon'ble High Court in the said order have clearly held that the respective departments are free to proceed in accordance with the law to obtain the services of the DEOs from the GEM Portal.

From the submissions made by the Ld. A/R for both the parties the admitted position which emerged is that the respondent pursuant to issue of an advertisement and through a selection process had appointed the complainants of this proceeding as DEO and the respondent has a sanction to continue their employment till March 2022. The complainants were appointed as contractual employees. Now the grievance of the complainants

is that the respondent by introducing the contractors is trying to place their service under the contractor which amounts to change in service condition and the management if would not be restrained from doing so their claim in the other proceeding claiming regularization would become infructuous and this action of the management is violative of section 33 of the Id Act. Thus, the precise question to be decided is if invitation of bids from the contractor and to employee the complainants through the contractor would amount to change in service condition of the complainants.

The Judgment of the Apex Court relied by the workmen has been passed by a five judge bench of Hon'ble Supreme Court wherein the object behind enacting section 33 of the Id Act after the amendment has been discussed and in Para 6 of the judgment it has been observed that section 33 was amended in 1956 permitting the employer to make changes in the service, or to discharge or dismiss an employee in relation to matters not connected with the pending industrial disputes.

At the same time the amendment provides safeguard for a workman who may be discharged or dismissed. In the said judgment the Hon'ble Apex Court have further held that when no application is made u/s 33 (2)(b) seeking approval, it is a clear case of contravention of the said provision and such order of contravention need to be corrected by exercise of the power vested u/s 33 of the ID Act.

In the instant case admittedly one industrial dispute is pending concerning the complainant and the management and no permission or approval has been sought by the employer in terms of section 33(2)(b). But the respondent employer has submitted that the complainants should not have any apprehension in respect of their engagement in as much as the NITs issued clearly stipulate that the existing DEOs would not be replaced and the pay scale has been prescribed their under. Here is a situation where a management is inviting bids through GEM Portal which is the mandate of GFR2017 pursuant to a policy decision taken by the government. The complainants in view of their direct contractual appointment by the management are apprehending change in their service condition if their service would be placed under the contractor/vendor. The Hon'ble High Court of Delhi while passing order in WPC No. 8498/2021 have already held the complainants being the contractual employees cannot have the inherent right to claim that the contractor cannot be changed. Considering all aspects of the matter this tribunal is of the view that the complainants working as contractual employees under the respondent when shifted as the employees under the contractor/ service provider procured through GEM and when there would be continuity of their service with the wage they are presently getting, the action would not amount to change of service condition. Any direction to the respondent to refrain from inviting the bid of the service provider through GEM would stand opposed to the policy decision of the government aimed at proper governance. Hence without prejudice to the claim of the complainants raised in Id No. 18/22 the petition filed u/s 33A is rejected in as much as no direction can be given to the respondent to stop the bidding pursuant to the direction of the government. However, the respondent, in view of the pending Industrial dispute between the complainants and respondent is directed to ensure the continuance of their service with the protection of wage and other benefits they are getting

under the management till final adjudication of Id No. 18/22. This order is without prejudice to the interest of either party of this proceeding. The application filed u/s 33A is accordingly disposed of.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

S. No.	Name of the workmen	Designation
1.	Saraswati	DEO
2.	Arun	DEO
3.	Ashwani Kumar	DEO
4.	Prashant Kumar	DEO
5.	Sonu	DEO
6.	Satpal	DEO
7.	Hemlata	DEO
8.	Bir Singh	DEO
9.	Vipin Kumar Yadav	DEO

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
18th May, 2022.
At Dehradun

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CGIT-cum-Labour Court.
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