THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT DELHI-1

I.D. No.69 /2024

Munni Lal Kumar & 20 Ors. Vs. Chief Electoral Officer, GNCT of Delhi

Misc App.No. __282____ / 24 (complaint u/s 33 ID Act)

Sh. Rajiv Agarwal, Siddharth Sapra, Navalendu Bhushan,
Advocates, A/Rs for workmen
Ms. Aditi Gupta, Advocate for Management

Justice Vikas Kunvar Srivastava
Retired Judge, Allahabad High Court
(Presiding Officer)

ORDER

This order is intended to decide Miscellaneous application moved by Claimants to grant ad interim relief in their favour against the management of GNCTD in I.D. No.69 /2024 Munni Lal Kumar & 20 Ors. vs. Chief Electoral Officer, GNCT of Delhi. In view of the above the Industrial dispute and miscellaneous application referred above is taken up for the purpose of hearing and decision.

FACTUAL MATRIX

Before going through the contents of Miscellaneous Application bearing number ___282 /2024 in the industrial dispute case of Munni Lal Kumar & 20 Ors. vs. Chief Electoral Officer, GNCT of Delhi, It would be pertinent to have reference made by the Central Government *vide* Order No. ND-25/III-4/2024-IR dated 19.03.2024. It runs as under:-

"1. Whether the Central Govt. is appropriate Govt. for Office of the Chief Electoral Officer, Govt. of NCT of Delhi u/s 2(a) of the Industrial Disputes Act, 1947?"

2. Whether the Office of the chief Electoral Officer, Govt. of NCT of Delhi is covered under the definition of the 'Industry' u/s(j) of the Industry Dispute Act, 1947 is relation to the work performed by the claimant Shri Munni Lal Kumar & 20 others (details mentioned in Annexure-A)?

3. Whether the claimants Shri Munni Lal Kumar & 20 others (details mentioned in Annexure-A) are covered under the definition of 'workman' u/s 2 (s) of the Industrial Disputes Act, 1947?
4. Whether the demand of Shri Munni Lal Kumar & 20 others (details mentioned in Annexure-A) through Delhi Parshashan Vikas Vibhag industrial Employees Union for regularisation in in services and salary as per pay scale of peon / Chowkidar and allowances with retrospective effect from the initial date of their joining along with all consequential benefits and with all arrears on the principle of equal pay for equal work, is legal and justified? If so, what relief workmen concerned are entitled and what directions are necessary in this respect?"

The industrial dispute made by the appropriate government is directed against the management of Chief Electoral Officer, Govt. of NCT of Delhi, impleaded as the opposite party in the statement of claim.

The claimants workmen who are detailed and described with their initial date of joining and designation in concerned departments of Govt. of NCT of Delhi in Charts under the heading "SCHEDULE" annexed at the bottom of this order have stated in their claim statement that the office of the management/opposite party, Chief Electoral Officer, Govt. of NCT of Delhi has been set-up in Delhi in accordance with the Section 13A of the Representation of the People Act, 1950. The Office is headed by Chief Electoral Officer, who works under the overall direction, superintendence and control of the Election Commission of India for all election related activities such as preparation of electoral rolls, preparation and issuance of electors photo identity cards and to conduct elections to seventy assembly constituencies of Delhi Legislative Assembly and seven Lok Sabha seats of Delhi. The management has one Office of Chief Electoral Officer, seventy voter centres and 11 district offices. The claimants/workman have joined into employment in office of the management with effect from the date as mentioned in said charts have been working as Peon-cum-Chowkidar in various offices/voter centres of the management, which are severable from the sovereign and regal functions of the management and as such in relation to the works having been done by them the management comes within the ambit of "industry" as defined in the Industrial Dispute Act, 1947 (for the purpose of brevity which shall here in after be called as " the Act" only).

The workmen were currently being paid wages at the rate of Rs.844/- per day which in month payable to the workmen for the actual number of days they have worked. The works performed by the workmen are regular and perennial in nature, still the management shows the workmen engaged for 89 days followed by one day unnatural break which is only on papers while workmen use to attend duties on the day of that mandatory unnatural break also. They work 12 hours every day without payment of overtime wages. They are made to work all days in a month, still they are not paid their salary of two days every month. The workmen concerned have been working against vacant posts of their designation shown in the chart continuously from the date

of their initial joining. The workmen concerned have also joined the civil defence corps as volunteers with spirit to serve humanity in the event of any disaster without expecting valuable consideration in lieu of their contribution with the no objection accorded by their department to attend call out duty in the disaster management by the civil defence corp. for such call out duty neither the management is employer nor the volunteers are employees and that stands on the footing of quite a different contribution than that of service as workmen rendered at their place of employment in GNCTD.

The concerned workmen raised their grievances through the Labour Union namely, **"Delhi Parshashan Vikas Vibhag Industrial Employee Union"**. The management, irrespective of the actual status of the workmen concerned in employment of GNCTD shows them as volunteers engaged from the Civil Defence Volunteers Corps with a view to deny the employment benefit to the workmen. But when the management did not pay heed, the same was agitated before the conciliation officer of the Labour Department of Central Government. The conciliation officer *vide* order dated 16.05.2023 issued notice to the management and advised them to adhere to the provision of Section 33 of the ID Act with respect to service condition of the workmen. Despite that, the management tried to terminate the services of the concerned workmen. Apprehending their source of livelihood imperilled workmen approached the High Court of Delhi filing a writ petition no. W.P. (C) 8153/2023. Hon'ble High Court *vide* order dated 01.06.2023 issued following directions:

> *"5. Taking into account the communication dated 16.05.2023 by Respondent No. 2 to Respondent No. 1, the Respondent No. 1 is directed to ensure that till the next date the services of the Petitioners who are working as Civil Defence Volunteers with Respondent No. 1 for the last six to fourteen years, are not replaced by another set of ad-hoc employees."*

It is the case of workmen that when despite the direction of the Hon'ble High Court quoted hereinabove the management terminated the services of the workmen in management of GNCTD in the garb of terminating continuing call out duties by issuing office order dated 31.10.2023. Office order dated 31.10.2023 was served upon workmen concerned on 02.11.2023.The office order 31.10.2023 runs as under:

"Whereas, as per provision of the Civil Defence Act, 1968 and rules and regulations thereunder, the civil Defence Volunteers (CDVs) are to be disaster called out only for dealing with hostile attack or for management;

And whereas, it has been called for duties in various departments of GNCTD which is contrary to the provisions of the Civil Defence Act, 1968 and the rules & regulations made thereunder;

And whereas, it has been noted that the aforesaid call out of Civil Defence Volunteer needs to be ended with immediate effect;

Now therefore, Director Civil Defence/Divisional Commissioner is pleased to end to all its members of Civil Defence Corps (Civil Defence Volunteers) Deployed in any) department/office with effect from 31 Oct, 2023 (A/N).

This issues with the approval of the Competent Authority."

Meanwhile, when the Writ Petition W.P.(C) No. 8153/2023 was taken up for the hearing, wherein the interim protection granted to the claimants was extended *vide* order dated 19.01.2024. Lateron, as per order dated 24.01.2024 passed by the Hon'ble High Court of Delhi in the W.P.(C). 8153/ 2023:

> *"12. In view of the aforesaid discussion, petitioner are directed to approach the CGIT with an application, if not filed, within two weeks from today seeking interim relief and the Ld. CGIT is directed to decide the dispute in relation to the entitlement of petitioner for the grant of any interim relief as expeditiously as possible in accordance with law without being influenced by any of the proceedings before this court. It is further directed that the CGIT shall not grant any unnecessary adjournments to either party."*

Further, the aforesaid Order was clarified *vide* Order dated 21.02.2024 the following:

> *"In view of the aforesaid discussion, this court is of the view that the order dated 24th January 2024 shall be clarified. It is clarified by this Court that the order passed by this court on 24th January 2024 shall be read as status quo ante as on 6th December 2023 till the disposal of application filed for seeking interim relief before the CGIT."*

In the instant Misc. Application it is stated that workmen/claimants have also moved complaint under section 33 A of the Act in connection with the above Industrial Dispute and also that their services have been illegally terminated by the management whilst the said industrial dispute is pending for adjudication. It is further stated that despite the direction of the Hon'ble High Court dated 06.12.2023 regarding payment of wages and continuance of duties, the management did not pay the salary for the month of Nov 2023 and so on. They have been rendered unemployed after that. They have a young family and old parents to take care of. They also have to pay many of their liabilities such as EMIs etc. However, the management showing a vindictive approach terminated their services.

In the wake of above facts instant application prays to grant interim relief during the pendency of the Industrial Dispute as well the complaint under section 33 A of the Act in terms of wages last drawn every month and to issue direction to the management to take back the workmen on duty and pass any such other order as deemed fit in favour of the workmen as against the management.

In written statement as against the claim statement of the workmen and also reply to the complaint under section 33 of the Act, the management states claimants only volunteers under the Civil Defence Act, and that Secretary, Revenue and Divisional Commissioner, Revenue are the authorities, to engage/recruit Civil Defence Volunteers under the Civil Defence Act, 1968. As per the management, the claimants

are meant to carry out the Civil Defence or Disaster Management activities and that they can be called on paid duty as per requirement in accordance with Section 9 of the Civil Defence Regulations 1968, where they are paid duty allowances and conveyance allowances on per day basis.It is also contended by the management that it is not an industry under Section 2(j) of the I.D Act, as they are neither producing any goods and services nor the electoral rolls and elections are conducted to satisfy human needs and wishes. The management has claimed to be performing the sovereign functions and constitutional obligations of the ECI under Article 324 of the Constitution of India and are not discharging any commercial activity/economic venture. The organisation of Civil Defence Volunteers is stated to be a volunteer organisation where individuals from private/public sector can register themselves as Civil Defense Volunteers and their services are utilised as and when required during disaster and providing relief to the affected people.

In the light of above facts the instant miscellaneous applications in concerned I.D. case intended to be decided, the Ld. AR for the workmen/claimants Shri Rajiv Agarwal, Advocate and one learned counsel Shri Sudhir Shukla, Advocate opted to argue the case on behalf of the Standing Counsel of GNCTD Shri Rishikesh Kumar, Advocate though on the ground of learned standing counsel hearing on the last preceding date was passed over and deferred. Parties are heard over the instant application.

ARGUMENTS

The thrust of the argument opposing the prayer of claimants as interim relief during pendency of the industrial dispute is on the words "Deployment is voluntary in nature only on need basis under the provision of Civil Defence Act" and the claimants as volunteers deployed under the Civil Defence Act at the time of enrolment submitted no objection certificate from their employer/undertaking that the employer has no objection to the individual volunteering with Civil Defence Corps. Therefore, the claimants could not ask for their permanence/regularisation on their posts because their deployment is not against a particular post nor they have undergone through a recruitment process for their present assignment. The posts are not sanctioned nor is there any approval from the Finance Department. No exercise by the workmen has ever been done to identify the requirement of the posts. No special budget is sanctioned for such deployment. Their claim of regularization and permanence in service is hit by the Apex Courts judgment in ***State of Karnataka Vs. Uma Devi (2006) 1 SCC 1***.

After having heard the Ld. Counsel for the parties to the industrial dispute on the application meant to seek interim relief in the nature and terms of payment of wages to the claimants as workmen and to issue suitable direction if any to the management, this Industrial Tribunal proceeds as under-

DISCUSSIONS

The Hon'ble High Court in order dated Jan 24, 2024 has directed the workmen/ claimants to approach the CGIT seeking interim relief and has also been pleased to direct the CGIT to decide the dispute in relation to the entitlement of the claimants (Petitioner before the Hon'ble High Court) for the grant of any interim relief as expeditiously as possible in accordance with law.

INCIDENTAL POWER OF THE INDUSTRIAL TRIBUNAL CUM LABOUR COURT TO GRANT INTERIM RELIEF OF INJUNCTION

In this regard the judgement 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.*

Before to go further in the discussions it would also be pertinent to understand the word prime facie referred in the above judgement of the Apex Court. Prima facie is a term that translates to "at first sight" or "Based on first impression". The phrase "Prima Facie" is used to describe a fact are presumption that is sufficient to be regarded as true unless otherwise rebutted or disproved. In law, it can refer to either evidence that is regarded plausible but susceptible to refutation or a stage in pre trial proceeding in which it is assessed whether the plaintiff/complainant has a sufficiently plausible case to go to trial. In others words prime facie is a legal term or a legal claim which is made when the plaintiff/complainant has enough evidence to proceed with a trial on the basis of which if he is given opportunity to prove them and if succeeding in proving them a possible decree are award may be in his favour.

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 as well as the status of the claimants despite the dispute had already been raised before the competent authority of the Labour Department and also in disobedience of his restraining order to not to disturb services of workmen and also in disobedience of the order of the Hon'ble High Court not to interfere with the terms and conditions and not to precipitate the workmen in contravention of mandatory provision of section 33. Interim application with prayer to issue directions to the management is moved on behalf of the claimants/workmen that they should be directed to continue with the payment of wages at the rate they lastly drawn during the pendency of the dispute raised initially before the conciliation officer of the labour department, before the High Court and presently before this industrial tribunal. The occasion to move such a prayer accrued to the claimants by virtue of the order of the management terminating their services in blatant violation of the mandatory prohibition under section 33, and in disobedience orders of the High Court Hon'ble Justice J.S. Khehar in the case of ***Subrata Roy Sahara V. Union of India reported in (2014) 8 SCC 470 at Para 185.2*** laid down that-

"Disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for noncompliance of a judicial order. Judicial orders cannot be permitted to be circumvented".

The 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 Cour. In Para 24 of the said judgement 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:*
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> *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."*

An Industrial Tribunal-cum-Labour Court has the incidental power to pass an order granting interim relief to the claimant until the passing of the final award, as already settled by the Apex Court in ***Hindustan Lever 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 hereunder 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";

The words ***"…and matters incidental thereto…"*** were explained by the Supreme Court in the case titled ***"Management of Hotel Imperial Vs. Hotel Workers Union," AIR 1959 Supreme Court 1342***, which suggests that there is no bar for an industrial tribunal to grant interim relief. It further suggests that ordinarily, the interim relief should not be the whole relief that the party would receive if they succeed finally. Paragraphs 21 and 22 of the above judgement are reproduced hereunder 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 bold its proceeding expeditiously and on the conclusion thereof submit its award to the appropriate government. An "award" us 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. The next question is as to how the tribunal should proceed in the matter if it decides to grant interim relief. The definition of the word 'award' shows that it can be either an interim or final determination either of the whole of the dispute referred to the tribunal or of any question relating thereto. Thus it is open to the tribunal to give an award about the entire dispute at the end of all proceedings. This will be final determination of the industrial dispute referred to it. It is also open to the tribunal to make an award about some other still remain to be decided . This will be an interim determination of any question relating thereto. In either case it will have to be published as required by section 17. Such awards are however not in the nature of interim for they decide the industrial dispute or some question relating thereto. Interim relief, on the other hand, is granted under the power conferred on the tribunal under section 10(4) with respect to matters incidental to the points of dispute for adjudication.*
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> *In the light of discussions made hereinabove in preceding Para's, it would be pertinent to note that industrial dispute preferred to this tribunal by appropriate*

government is with regard to relief of regularization and pending the same for adjudication when terms and conditions of the services were materially interfere by the management consequent thereupon a complaint of workmen/claimants under section 33 A of the Act are before the tribunal to finally decide and pass award the instant application in hand meant for interim relief which have been referred in one of the preceding Para is to be decided by the tribunal on the principal and sliant in order 33 rule 1, 2 & 3 of the CPC which requires the grant of refusal of the interim exemption on considering the three essential ingredients whether existing concurrently. These three ingredient of prima facie case irreparable loss and balance of convenience."

Prima facie case of the workmen/claimants as pleaded in their statement of claim and the complaint under section 33 A of the Act is to be read in consonance with the documentary evidences. Since from the very inception in the present industrial dispute firstly before the labour authorities namely the conciliation officer and also in various writ proceedings before the Hon'ble High Court and then before this industrial tribunal, there is a consistent plea that the concerned workmen have been working in the establishment of the management performing their duties as Peon-cum-Chowkidar in various offices/voter centres of the management. The date of engagement/deployment or employment of the workmen concerned is unequivocally referred to in a chart submitted by them propagating their industrial Dispute at various forums of law, some of them working since a considerable long period for more than one or two decades. This is noteworthy that the initial engagement of such workmen and their performing works on different assignments from time to time in the departments of GNCTD is not denied even admitted in so many words in their reply submitted before all those forums of law. The tribunal has taken into notice that while the initial engagement of the claimants in various works during a long span of time, performance of work by such claimants under the direct control supervision and instruction of the competent authorities in various departments of the GNCTD. There is no explanation on the part of management that why their services are kept temporary for such a long period in violation of law prescribed by the Industrial Dispute Act, The contract labour (Regulation and Abolition) Act, 1971 as well as various standing orders issued by them in consonance with the provision of Industrial establishment standing orders Act etc. This is also admitted by the management that the services of the present claimants/workmen were being taken and utilized regularly without any extraordinary break in their continuity of service as contract labours paying them wages in accordance with rate prescribed under the minimum wages Act prevailing at the relevant times. Then also, the management seems to argue for the sake to oppose their claim before a forum of law that they are not workmen as defined and the management of GNCTD is excluded from the definition of industry as defined the under the Industrial Dispute Act, 1947.

In the above context section 2(j) as amended up to date is being quoted hereunder:

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation or workmen;"

Likewise the definition of workmen as given under section 2 (s) is quoted hereunder:

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

I. *Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950(46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
II. *Who is employed in the police serives or as an officer or other employee of a prison; or*
III. *Who is employed mainly in a managerial or administrative capacity; or*
IV. *Who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, funtions, mainly of a managerial nature.*

Historically, the definition of the term "Industry" under the Act is interpreted in the case of ***Bangalore Water Supply and Sewerage Board V. A. Rajappa reported in AIR 1978 Supreme Court 845*** wherein Hon'ble Supreme Court has given interpretation of the word "Industry" in the widest scope and "Sovereign Functions" within a limited orbit, Industrial adjudication as influenced by the aforesaid precepts and enterprise cannot therefore be excluded from the ambit of the Act merely because of the individual predilection of a judge. A Study of the judgments of the Supreme Court from Banerjee to Jai Bir Singh brings to the fore a variety of cases where the court had to decide on the questions of ambit of 'Industry' under the Act. The activities which engaged the attention of the court on the issue of 'Industry' mere those of municipalities, local bodies, government run hospitals, educational institutions, liberal professions, clubs, state and central government departments, etc. and inclusive. It is in two parts. The first part lays down that "industry" means any business, trade, undertaking, manufacture or calling of employers" and the second part specifies that it 'includes' any calling service, employment, handicraft or industrial occupation or avocation of workmen." Thus, while the first part defines it from standpoint of the employer, the second part visualises it from that of the employees. Discussing both these parts, the supreme court, In ***Madras Gymkhana club employees union V. Gymkhana club***, attempted to keep the two notions concerning employers and employees apart and expressed the view that denotation of the term 'industry' is to be found in the first part relating to the employers and the connotation of the term is intended to include the second part relating to workmen. Later on, the court in ***Safdarjung Hospital V. Kuldip Singh Sethi*** held that the definition had to be read as a whole and when so read it denoted a collective enterprise in which employers and employees were associated. It did not exist by the employees alone. It existed only when there was a relationship between employers and employees, the former engaged in 'business, trade, undertaking, manufacture or calling of employers' and the latter engaged in 'calling, service employment, handicraft or industrial occupation or avocation'.

In the context of the present matter the issue raised by the management before this court that to the above effect that GNCTD are discharging governmental functions and therefore immune from the definition of industry, Industrial Dispute and application of Industrial Dispute Act over them in strict sense because they are discharging sovereign or legal function. The above issue raised by the management stands answered as it held by the ***Bangalore water supply case (Supra)*** according to which 'Industry' as define section 2(j) has wide import (a) Where (i) Systematic activity, (ii) organized by co-operation between employer and employee, (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religions but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, Prasad or food), Prima facie, there is an 'Industry' in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Although Section 2(j) uses words of the widest amplitude in its two limbs their meaning cannot be magnified to overreach itself. Further the Supreme Court in above case propounded a working principle called a triple test number. (i) There should be systematic activity. (ii) Organized b co-operation between employer or employee. (iii) For the production and/or distribution of goods and services calculated to satisfy human wants and wishes. It is further emphasized that industry does not include spiritual or religious services geared to celestial bliss.

Therefore, the consequences of the decision in the above case are that profession, Clubs, Education Institution, Cooperatives, Research Institutes, Charitable Projects and other Adventures if they fulfill the triple test stated above cannot be assumpted from the scope of section 2(j) of the Act.

In ***State of U.P V. Jai Bir Singh 2017 (3) SCC 311***, it was held that a caveat has to be entered on confining 'Sovereign Functions' to the traditional so described as 'inalienable functions' comparable to those performed by a monarch, a ruler or a non-democratic government. The learned judges in the ***Banglore Water Supply a Sewerage Board*** case seem to have confined only such sovereign functions outside the purview of 'industry' which can be termed strictly as constitutional functions of three wings of the state i.e., executive, legislature and judiciary. The concept of sovereignty in a constitutional democracy is different from the traditional concept of sovereignty which is confined to 'law and order','defense' 'law making' and 'justice dispensation'. In a democracy governed by the Constitutional obligations contained in the Directive Principles of the state policy in part- IV of the Constitution of India. From the point of view, wherever the government undertakes public welfare activities in discharge of its constitutional obligations, as provided in part- IV of the constitutions, such activities should be treated

as activities in discharge of sovereign functions falling outside the purview of 'industry'. Whether employees employed in such welfare activities of the government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislature but for that reason. Such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry.

In ***Union of India V. Raju Kumar Shah and with other similar writ petitions Hon'ble High Court reported in 2020 SCC Online Delhi 370*** observed in Para 64 and 65 which are being quoted here under;

> *"Para 64 . The "Predominant nature" test, thereby, stands reiterated, but even more significant in the reference, by the Supreme Court, the "Defence of the Country, the raising of armed forces, making peace or waging war, foreign affairs, the powers to acquire and retain territory, etc,"Included , within the concluding "etc" in the afore-extracted passage from the judgment of the Supreme Court, would be functions which are similar, in character, to those mentioned earlier, i.e., defence of the country, raising of Armed forces, making peace, waging war, foreign affairs, and the power to acquire and retain territory.*
>
> *Para 65. Apparently, therefore, only such functions may be regarded as "inalienably sovereign", as could not, constitutionally and at any point of time, ever be delegated to a private authority, as they are incapable of being discharged by private persons. The fact that, in view of the statutory dispensations, existing at a particular point of time, the function is required to be discharged by the Government, or by a governmental authority, would not, ipso facto, be sufficient to Characterize the functions as "Sovereign". Functions such as making peace, waging war, legislation, maintenance of public law and order, and eminent domain and acquisition of territory for public purposes, are constitutionally and inalienably, sovereign and are incapable of being delegated to any private authority, at any fore cable point of time. Such functions, alone, would be eligible to the regarded as "inalienably sovereign". So as to justify exemption from the definition of "Industry" in the ID Act.*

On the basis of above discussion this tribunal is of opinion opinion that irrespective of its legal functions the GNCTD is discharging some other works which cannot be said inalienable function like the works of the present claimants/workmen were discharging under the direct control and supervision of Competent Authorities, Officers and Employees in various department of GNCTD they are workmen as defined under section 2(s) quoted here in above in preceding Para in relation to the works having been discharged by them and the management is an employer as defined in section 2(g) of the Act.

Section 2(g) *"employer"* means-

> *(i) In relation to any industry carried on by or under the authority of any department of [the central Government or a state Government,] the authority*

prescribed in this behalf, or where no authority is prescribed, the head of the department
(ii) In relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

Therefore, the pleadings of the parties and evidences on record collectively tend to establish that the management of GNCTD is industry in relation to the work assigned to the present claimants/workmen during their engagement as such from time to time is an 'Industry' and there clearly exists relation of employer and employee between management and the claimants under the definition given in the Industrial Dispute Act. Likewise, the claimants undoubtedly come within the ambit of definition of workmen as defined under the Act. Therefore, the dispute as raised before the Conciliation Officer appointed under the Industrial Dispute Act and referred to this tribunal by the appropriate government is prima facie an industrial dispute as defined under section 2(k) of the Act. Section 2(k) is being quoted here under for easy reference;

"Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is concerned with the employment or non-employment or the terms of employment of with the conditions of labour, of any person;

When the claimants/workmen have successfully established the management an industry they are workmen therein and engaged with in their services for a long even then admittedly they were kept as contractual workmen for a considerably long duration, Prima facie they had been subjected to Unfair Labour Practice which is defined under section 2 (ra) ."Unfair Labour Practice" means any of the practices specified in the fifth Schedule;

In the schedule of the Act the unfair labour practice is elaborated as *"10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."*

To deny the present claimants claim under the industrial dispute so as to thwart off their prima facie case the management has posed the status of the present claimants illegally and irregularly employed in the various departments of the GNCTD because they were volunteers under the Civil Defence Act for providing call out services in the event of disasters if any in the State of Delhi and for that their services shall be treated as **"NISHKAM SEWA"** if translated to English means" service for no valuable considerations". Much vehemence is given on the provision of the Civil Defence Act 1968 of which section 2(ab) and section 5 relating to appointment as member of civil defence corps use words "any person" does not qualify such person to be a government servant necessarily it keeps free any person from the public at large who is sprit fully volunteer themselves to contribute their services without any expectation to be paid in lieu their of. The management has remained unsuccessful in establishing that in lieu of they being a volunteer in civil defence were given appointment in various departments of GNCTD. Management in arguments and written submission has also admitted that a person to be eligible for enrollment as volunteer may be professing personally business, serving in private establishment or government service are involved in any other

activities who is willing and ready to volunteer himself in case of any disaster. Disaster like Firefighting, Flood management, Earthquake Management and in exercise of right to Self Defence of himself or of any other's person or property. It means that the present employment of the claimants in various department of GNCTD has no material connection with ending their call out duty as volunteer in civil defence. The management has clearly admitted that the total no of 1,75,000 persons are enrolled as volunteers in Civil Defence. Only some of them to say a nominal percentage of them about 10% are working in the various departments of GNCTD. It clearly means that a government employee/workmen or any individual from the different field of life activities may be a volunteer in the Civil Defence Corps but inverse is not possible that every person who is in government service is necessarily be treated as volunteer unless he himself opted to be enrolled as such in civil defence corp. it is therefore established that ending the call out services as volunteer in civil defence will automatically not enough to end the services of such volunteer if he is in service of government in absence of law and rules in this regard with an employment in the government department. Therefore, if call out services under the Civil Defence Act is terminated by the Civil Defence Authorities prima facie it would not have effect on the status of a volunteer as employee or workmen of a department in GNCTD.

The plea of claimants being a volunteer under the Civil Defence Act and therefore, they have no right to demand regularization in services in their department the management of GNCTD seems to be a veil to cover the act of illegally terminating the services of present claimants/workmen and also to avoid the consequences of their act of Unfair Labour Practice.

The dispute as to the regularization was raised before the management but when they did not pay heed and whisper threats to terminate the services the same was raised before the conciliation officer on …… The Conciliation Officer in the matter restrain the management not to disturb in continuous in service of the workmen till the adjudication of the dispute even when the workmen apprehended that the management is going to terminate the services in GNCTD departments in the garb of termination of call out services in Civil Defence they immediately restup to the high court. Hon'ble high court also restrained the GNCTD for not precipitating the services of workmen till the final decision over the industrial dispute the management cleverly enough stopped taking the work from the present workmen and even published and advertisement to fill up vacancies expected to be all vacant from ousting the present claimants from their services. They apprehension of the claimants/workmen is reasonable and their expectation from the tribunal to direct management for claimant of their wages is lawful and they are entitled to get such relief from this tribunal. The prima facie case of the claimants/workmen is fully established.

Irreparable loss the workmen/claimants who were depending on their wages for feeding their families and to discharge their liabilities in day to day life as they were in various department of GNCTD who were utilizing their services since long for more than one and two decades as the case may be were all of sudden without their fault stopped from discharging their duties assigned to them and from getting their wages in view of their valuable services. Loss of means of livelihood is an irreparable loss.

Balance of convenience-The plea of management that there is no vacancy and sanctioned post with regard to the work of present claimant/workmen said to be discharged in the various department of GNCTD and there is no financial approval there for , stands belied by recent action of the GNCTD itself as they have published an advertisement for recruitment of suitable persons on the posts upon which the present claimants/workmen were working. The management has not explained and presented the rules, regulation or standing order if any before the tribunal to show how the workmen/claimants were engaged in the services of the management without prior prior sanction of government and availability of budget. They have also not cited incident of any unlawful activities on the part of present workmen/claimant nor they have stated what action has been taken by them against such officer of the management who had employed claimants/workmen for such a extraordinary long period of one or two decades. Therefore, irreparable loss occasioned to the workmen/ claimants by the act of management but the management itself is not going to suffer, if the workmen/claimants are retained in service till the final adjudication of the dispute.

The Tribunal is of opinion that the three essential ingredients for grant of interim relief in the circumstances of the case both in the nature of prohibition as well as mandatory direction are well established as against the case of claimant/workmen set forth in their application against the move of management of taking fresh hands in place of the workmen as they had issued a tender for engaging fresh hands.

Injunction and direction as interim order

There is no doubt that the management, being the appointing authority, is competent to terminate the service of the workmen, but subject to compliance with the law and the procedure prescribed under the Industrial Disputes Act. Under section 25F of I.D. Act, Retrenchment, as defined in section 2(oo) of the Act, amounts to termination of service, but the inverse is not true. Every termination of service by the management is not retrenchment of the workmen permissible under the Industrial Disputes Act.

It is not the case of the management that the services of the claimants as workmen were time-bound for any project work, bound to be terminated with the completion of the work.

It is also not the case of the management that they terminated the services of the workmen on any other grounds, such as misconduct or their inability to discharge the duties assigned to them. The case put up before the tribunal on behalf of the management relates to the ending of call-out duties of a volunteer under the Civil Defence Act, 1968, but how and in what manner the end of call-out duties of a volunteer who is also an employee in the department of management is materially connected to, or adversely affects the present workmen/claimants in the termination of their services also.

The claim of regularisation is to be adjudicated after taking oral and documentary evidence on record with regard to the nature of the appointment/engagement of the workmen, the continuation of their services, the utilisation of their services by management, the standing orders governing the engagement of workmen concerned, as well as the alleged termination of service of the workmen concerned by management.

With the subject of the final award, the complaint under section 33 is also to be decided on the basis of evidence placed and brought on record by the parties to the industrial dispute. In both matters, the essence of the subject matter is the continuity of service. After raising the dispute before the Conciliation Officer, section 33 of the Industrial Disputes Act comes into operation, which mandatorily restricts the management from terminating the services of workmen without prior permission of the concerned authority or tribunal.

In view of the above, ***Jaipur Zila Sarkari Bhumi Vikas Bank vs. Ram Gopal Sharma, AIR 1994 (6) SCC 522***, the Constitution Bench of the Hon'ble Supreme Court held that if prior approval is not granted under section 33(2)(b) of the Industrial Disputes Act, 1947, the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal, and the want of approval under section 33(2)(b) renders the order of dismissal ineffective.

The alleged termination of services of the workmen concerned is ineffective and inoperative and shall be treated as if it was not passed at all. Therefore, the tribunal hereby restrains the management/Chief Electoral Officer from divesting the workmen concerned from their wages equal to the rate of wages last disbursed by the management to them. The management is further directed to keep the vacancies reserved for the present workmen/claimants during the pendency of the present industrial dispute and the complaint under section 33 moved therein.

The office is directed to send a copy of the order in due procedure of law under section 17A for compliance and further action.

Justice Vikas Kunvar Srivastava
Retired Judge, Allahabad High Court
(Presiding Officer)
17.10.2024

Sudha Jain
Ashish