

**BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM –  
LABOUR COURT No. 1, NEW DELHI**

**I.D. no. 189/2023**

**Sh. Sitaram & 14 Ors. vs. National Institute of Open Schooling (NIOS)**

Sh. Sitaram & 14 Others,  
E-672/21, Ashok Nagar,  
Shahdara, Delhi-110093.

...Applicants/Claimants

Versus

The Secretary,  
National Institute of Open Schooling, A-24-25,  
Institutional Area, Sector-62,  
Noida (U.P.) -201309.

... Management/respondent

**Counsels:**

For Applicant/ Claimant:

*Sh. R.K. Shukla, Ld. AR.*

For Management/ Respondent:

*Sh. Rohit Lochav, Ld. AR.*

**Order dated:**

This order shall dispose of an application filed by the claimant under section 33-A of the **Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act')**.

It is stated in the application that the workmen have already raised an industrial dispute bearing ID No. 15/2023 seeking parity of wages with Central Government daily wagers/casual labourers, which is presently pending adjudication before this Tribunal.

It is further stated that during the pendency of the aforesaid dispute, the services of two workmen, namely Sh. Sitaram and Sh. Amod Kumar, were terminated vide order dated 13.06.2023, without obtaining approval from this Tribunal as required under Section 33(2)(b) of the

Act. According to the claimants, such termination during the pendency of an industrial dispute amounts to a change in service conditions, which is not permissible under law.

In the application, it has been prayed that the order of termination dated 13.06.2023 be declared illegal and that the management be directed to reinstate the aforesaid workmen with full back wages and continuity of service.

In response, the management filed a reply to the application, raising preliminary objections. It has been submitted that in the respondent institution there is no post designated as *peon* and that the workmen have only been engaged as casual workers (unskilled). It is further stated that the said workmen are not employees of the respondent institution and hence cannot claim parity with regular employees. It is also submitted that no bonus/benefit is payable even to regular employees of the respondent institution after the audit objections raised by the Indian Audit and Accounts Department, Office of the Director General of Audit, Lucknow, in its report dated 26.10.2020, and therefore, no such benefit can be given to casual workers. It has relied upon an Office Memorandum F. No. 851055/E-III(A)/2018 dated 13.08.2018 issued by the Ministry of Finance, Government of India, whereby payment of bonus to autonomous organizations has been disallowed.

In the para-wise reply, it has been denied that the services of the two workmen, namely Sh. Sitaram and Sh. Amod Kumar, were terminated without cause or without approval of this Tribunal. It has been submitted that all the workmen in the connected matter as well as in the present case are only casual labour and not regular employees. So far so the letter dated 13.06.2023 is concerned, it has been contended that the services of the aforesaid two workmen were not terminated, but were discontinued as their services were no longer required.

In view of the above, the management has prayed for dismissal of the application.

Before deciding the application, the factual background of this case is required to be reproduced herein. The appropriate government vide letter dated 09.04.2019 sent a reference to this tribunal for adjudication in the following words:

***“Whether demands of Shri Sitaram & 14 others vide letter dated 22.12.2021 to the management of National Institute of Open Schooling, Noida regarding non-payment of wages as per DoPT guidelines and bonus, are proper, legal and justified? If yes, to what relief as sought vide letter dated 22.12.2021 are the workers entitled and what directions, if any, are necessary in the matter?”***

In pursuance of the reference, the claimants filed their claim statement, seeking wages and service benefits at par with Central Government daily wagers/casual labour as per DoPT guidelines. It is stated that the workmen have been working with the management since 1996–97 but are being paid as per State Government rates, despite the management functioning under the Ministry of Education. The grievance of the workmen is denial of parity of wages, weekly offs, medical facilities, festival leave and other incidental benefits. Accordingly, the workmen pray for a direction to the management to grant wages and benefits as per DoPT guidelines, grant two days weekly offs, and other benefits.

In response, the respondent filed its written statement stating that the claim is not maintainable as the workmen are only engaged as casual workers (unskilled) and are not employees of the respondent institution. It denied its liability to pay bonus or other benefits in view of the O.M. dated 13.08.2018 issued by Ministry of Finance. Being casual, the workmen cannot claim parity with regular employees in respect of wages, bonus or other service benefits. It was also submitted that the respondent is an autonomous body governed by its own rules and regulations and DoPT’s guidelines are not applicable to them.

It is denied that the workmen are entitled to minimum pay scale or equal pay at par with regular or Central Government employees. The respondent reiterates that the institution functions independently under its own statutory framework and policies, and therefore, the claims for parity of wages and benefits are unsustainable.

I have heard the arguments presented by both parties and perused the case record. Before proceeding further, the text of Section 33 of the Act is required to be reproduced herein:

**[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—**

**(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—**

**(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or**

**(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.**

**(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—**

**(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or**

**(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.**

**(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute,**

*take any action against any protected workman concerned in such dispute—*

*(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or (b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending. Explanation.—For the purposes of this sub-section, a “protected workman”, in relation to an establishment, means a workman who, being 4[a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.*

*(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section*

*(3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen. (5) Where an employer makes an application to a conciliation officer, Board, 2[an arbitrator, a] labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, 5[within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:] [Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit: Provided further that*

***no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.]***

Having considered the pleadings and material on record, it is held that the termination of services of the two workmen, namely Sh. Sitaram and Sh. Amod Kumar, during the pendency of ID No. 15/2023, without seeking prior approval from this Tribunal as required under Section 33(2)(b) of the Industrial Disputes Act, 1947, is illegal and untenable in law.

The plea of the management that the services of the workmen were “no longer required” cannot prevail against the statutory protection granted to workmen under Section 33 of the Act. Any change in service conditions or termination during the pendency of an industrial dispute, without the permission of the Tribunal, is a clear violation of law.

Accordingly, the application stands allowed. The management is directed to reinstate the said workmen with immediate effect as daily wagers until the main reference (I.D. no. 15/2023) is decided. The management is further directed to pay full back wages to the workmen, equivalent to minimum wages, from the date of termination till reinstatement. Ordered accordingly.

Dated: 03.10.2025

ATUL KUMAR GARG  
Presiding Officer  
CGIT – cum – Labour Court – I