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

ID No. 218/2018

Mrs. Meena and others V. Central Public Work Department (C.P.W.D)

Misc. Application no. 11 of 2023, under section 33 of the Industrial Dispute Act, 1947.

Shri B.K. Prasad, A/R for the claimant
Shri Atul Bhardwaj, A/R for the management

Justice Vikas Kunvar Srivastava
(Presiding Officer)
(Former Judge, Alld. High Court)

1. The instant application is against the management (CPWD) moved by the claimants workmen complaining contravention of the prohibitions mandatorily required to be followed by an industrial employer in the event of alteration in terms and conditions of service etc. during pendency of the industrial dispute, as incorporated under section 33 of the Industrial Dispute Act, 1947 (shall be addressed herein after for the brevity, " the Act" only).

   At the behest of claimants, the 7 workmen, who were working as sweepers under "T Division of Director General (works), CPWD, Delhi" (the management) namely (1). Meena since 15.04.2009, (2). Sonia since 15.05.2003 (3). Samta since15.10.2010 (4). Pinki since 15.12.2008 (5). Praveen since 07.08.2002 (6). Shyam Bala since 10.05.1997 and (7) Jeetu since10.10.2010, the central government vide it's letter dated 20.07.2018 on satisfying itself as to the existence of an industrial dispute between the management and the Workmen enumerated above, made reference of the same for adjudication to this Central Government Industrial Tribunal in the terms that

   "***whether they are entitled to equal pay for equal work from the date of their initial joining and regularization by the management? If yes, to what relief the respective workmen are entitled?***"

   Pursuant to the reference an industrial dispute case is registered bearing I.D. No.218/2018 captioned above which is pending before the tribunal till date. Written statement of the defense has promptly been filed by the management and issues are framed by the tribunal long back on 19 August, 2019, as to whether the claim filed by the claimants is not legally maintainable and also as to their

entitlement to the relief in terms of the reference. Since then no evidence was adduced by either of the parties prior to November 2023, when Sri B.K.Prasad, the learned A.R. Of the workmen submitted his evidence of examination in chief on affidavit which is placed on record of the tribunal. However, the management has not subjected him to cross examination till date.

2. The instant miscellaneous application in hand is moved by the claimants with complaint against the management that, they in contravention of the prohibitions contained in the section 33 of the Act, have abruptly caused through their contractor disturbance in prolonged continuity of service as sweeper by cessation of deployment in the offices buildings and premises owned, controlled, looked and managed by CPWD. They actually caused termination of service w.e.f. 01.09.2022 despite the pendency of the industrial dispute in the tribunal since 20.07.2018. Efore proceed further to deal with the complaint, it would be pertinent to see the provisions of the section 33of the Act-

"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 1[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 2[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.

(Relevant portions of the prohibition contained in the section 33 above are highlighted for the purpose of the instant complaint)

3. The learned A.R has vehemently argued that keeping pending the industrial dispute without any endeavor at their end to get the same adjudicated, the management abruptly terminated the services of the workmen concerned without seeking prior approval from the tribunal under section 33(2)(b) of the Act (Supra). The prohibition contained in the section is stringent in nature and if not followed by the employer, the inevitable consequences would be that the employer was duty bound to treat the employee as continuing in service and pay him his wages for the period.

4. The learned A.R. of the management argued that the claimant workmen concerned have never been the employees of the CPWD. They are contact Labour and employees of the contractor who deployed them on the sites under his control and supervision. The management had not terminated the services of the claimant workmen, therefore they were not obliged to follow the mandatory prohibitions and to seek prior approval of the alleged termination of service by the contractor under whom the claimants were working.

   Heard the argument and perused the documentary evidences placed on record of the case before the tribunal.

   Admittedly the industrial dispute is pending with regard to regularization and entitlement of the concerned workmen since 20.07.2018 before the tribunal in the know and knowledge of the management as they are contesting the same in the tribunal. It is also pertinent to note that for the claim under the reference sent to the tribunal the basic subject matter of dispute is prolonged continuous services much more than required for permanent employment, 240 days under the industrial law. Prima facie the claimants successfully showed their work as sweepers in the premises owned or managed by the CPWD. Issue to be entertained in the Industrial dispute case would be that whether the concerned workmen were serving the management as contract Labour, if yes, the effect of more than 10-15 years continuous service through independent contractor with the same principal employer doing the same work etc. This would also be in issue

of utmost importance whether such contractual services imparted to the management through several independent contractors, despite the notification published by the central government issued under section 10(1) of the Contract Labour (Regulation and Prohibition) Act, 1970 dated 31 July 2002, which declared the contract Labour in certain services barred including that of sweepers in the management. The continuous utilization of concerned workmen‘s service as Contract Labour shall also have bearing on their claim of equal pay for equal work. At present the tribunal has no occasion to decide all the issues involved in the industrial dispute case on merit. The instant miscellaneous application under section 33 need to be decided first as it has raised a serious complaint of contravention of the mandatory prohibitions under the Act which are not legally possible to be deferred, postponed or ignored for any more,

5. The contentions of learned A.R. of the management seems baseless in view of the admissions emerging from the pleading like written statement, where the continuation of services of the claimants workmen in and utilization their of by the management as principal employer is not specifically denied, rather their employment is qualified as through the independent contractors. Evidence available on record also show that, the claimant workmen have been issued identity cards time to time by the management in recognition of the employees of the management as an establishment of the central government, which stand un rebutted by them. As such there are sufficient evidence, materials and admissions on record to prim facie treat the claimants workmen as workmen of the management with whom they are concerned in the industrial dispute pending before the tribunal, but without waiting for the adjudication they terminated the services of the workmen concerned to their prejudice. The management thus dared to contravene the prohibition contained in section 33(2) (b) of the Act , in terminating the services of the claimant workmen concerned without seeking prior approval of the tribunal in accordance with the proviso attached therewith A constitution Bench of the Apex court in the case of ***Jaipur Zila Sahkari Bhumi Vikas Bank Ltd. V. Ram Gopal Sharma And Others. , (2002) 2 SCC 244*** the nature of the section 33(2)(b) and the effect of it's non compliance by the employer is held. The apex court explained the prohibition contained in the provision is mandatory for an employer. Failure to make application for prior approval of the intended discharge or dismissal by the employer renders the discharge or dismissal void and inoperative. In such circumstances, the employee continues to be in service as if the order of discharge or dismissal was never passed.

6. The tribunal on the basis of aforementioned discussion of the facts and circumstances reached at conclusion that the statement of fact impressed on behalf of the management in written statement and reply to the instant application

as well as in the course of arguments by the learned AR of the management that the contractor dropped the claimant workmen from deployment in work since the date 01.09.2022 is of no relevance and effect. The claimants workmen shall be treated continuing in services working for the management on the posts of sweeper.

7. The tribunal further direct to the management that,

(a) The claimant workmen named in the letter of reference of the industrial dispute to this tribunal dated 20.07.2018 shall not be prevented from their duties as sweeper wherever they were working prior to the date 01.09.2022 on the sites of work owned, controlled or served by the management forthwith without any un reasonable delay from the date of order.

(b) the management shall ensure to pay off the claimants workmen concerned their wages kept unpaid since the date 01.09.2022 till date forthwith without any unreasonable delay within a maximum period of 15 days from the date of order, otherwise in case of failure to pay within time prescribed by the tribunal, the shall be payable by the management with an interest at the rate of 18% per annum. In case of further failure the same shall be recoverable from the management as land revenue in accordance with the due process of law.

(c) The management is further directed to remain abide themselves with the provisions of section 33 of the Act and not to disturbed the services of the claimant workmen concerned, payment of their wages and other terms and conditions of their services till the final adjudication of the Industrial Dispute case no.218/2018 pending before the tribunal.

With the above directions the instant miscellaneous application under section 33 is allowed and disposed off.

The office is directed to list the ID case captioned above for evidence of the management in the 1st week of the December 2023.

Date: 01.11.2023

Justice Vikas Kunvar Sirvastava
Former Judge, Alld. High Court
Presiding Officer