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

ID No. 116/2023

Mr. Kamlesh Panwar And 7 others V. The Delhi Cantonment Board

Misc. Application no. 159 of 2023, under section 33 of the Industrial Dispute Act,1947.

Shri Rajiv Agrawal, A/R for the claimant
Shri Ankur Mishra, A/R for the management

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

Prologue

1. The instant applications in hand are moved by the claimant workmen in the above captioned industrial dispute case, purportedly seeking issuance of several directions to the management viz, to comply with the directions of Hon'ble High court of Delhi in W.P (C) 9645 of 2022 dated 29.06.2022 to maintain the status quo in respect of the service conditions of the workmen, and to allow the workmen to continue their duties, to pay them their earned wages. Another application is a complaint against the management under section 33 of the Industrial Dispute Act, 1947. It is alleged that the management, despite the order of the conciliation officer, the directions of the Delhi high court and the pendency of the industrial dispute before this tribunal, has terminated the services of some of the claimant workmen by refusing them duty since 15.07.2022 and others since August 2022.

2. Since the facts, constituting the accrual of cause of action for moving both the above applications entitling the claimant workmen to seek reliefs sought there in, are inseparably interwoven, therefore they are being decided simultaneously.

3. In its present form the section 33 in the Industrial Dispute Act, 1947 (for the brevity shall be referred herein after as the Act only) exists after substitution of subsections in the then existing section 33 vide Act No. 36 of 1956 w.e.f. 10.03.1957. It runs as under- *(relevant to the present matter only is reproduced)*

> ***"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."

4. When a complaint is made u/s 33 before the tribunal complaining alteration in service conditions by the employer to the prejudice of the workman and if the employer is found contravening the mandatory prohibition of section 33, section 33 A provides that the dispute under the complaint is to be adjudicated on merit and to pass an award. For the purpose of easy reference section 33 A of the Act is reproduced here under-

"33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—*Where an employer contravenes the provisions of section 33 during the pendency of proceedings 3[before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or*

National Tribunal], any employee aggrieved by such contravention, may make a complaint in writing, 5[in the prescribed manner,—

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly

Factual matrix

5. Before considering the workmen's complaint made in the above application and their prayer to maintain the status quo in terms of the directions of the Hon'ble High Court during the pendency of dispute before this tribunal, it would be relevant and pertinent to apprise what the dispute exists between the workmen and the management. Pursuant to the reference, at the behest of Kamlesh Panwar and 7 others, made under the sub section (1) & (2A) of the section 10 of the Act by the Central Government through the Ministry of Labour & Employment dated 2704.2023 the present industrial dispute is registered by this tribunal as ID No. 116/ 2023 . The industrial dispute existing between the claimants workmen and their employer the 'Delhi Cantonment Board' (which herein after shall be addressed as 'the management' only) runs in the following terms-

"1. Whether the demand raised by Hospital Employees' Union vide letter dated 27.06.2022 against the management of the Delhi Cantonment Board for regularization of Shri Kamlesh Panwar & 7 others workmen (details at Annexure-A) in service from the initial date of joining along with arrears of difference in salary paid and salary on the post of Senior Nurses/ Nurse Grade-A on the principle of 'equal pay for equal work' is legal, proper and justified? If yes, to what relief Sh. Kamlesh Panwar & 7 others workers are entitled to and what other directions, if any, are necessary in this respect?

2. Whether the services of the workmen have been dispensed in violation of section 33 of the industrial Disputes Act, 1947? If yes, what relief Sh. Kamlesh Panwar & 7 others workers are entitled to and what other directions, if any, are necessary in this regard?"

It is complained that the management has clearly violated the directions of the Hon'ble High Court by disturbing the services of the workmen and not paying

salaries to them. The directions of the High Court contained in the para 10 of the order dated 29.06.2022 passed in aforementioned writ petition is reproduced herein below with due regard –

"In light of the above, since the petitioners have already raised an industrial dispute, it is made clear that the services of the petitioners shall not be disturbed during the pendency of the dispute before the tribunal, without compliance of the section 33 of the Industrial Dispute Act, 1947."

6. Despite the above directions the management refused to allow duties to the workmen from 15.07.2022 though they were in continuous working in the service of the management for a considerable period of about 10 years, since the date of their initial date of joining.

7. The industrial dispute before the tribunal may summarily be apprised on the basis of the statement of the claim submitted on 25.09.2023 by the claimant workmen along with relevant documents relating to their continuous employment in the management's hospital since long and how the present dispute arose. The claimant workmen got their initial appointment on contract basis for year to year contract of services directly entered into with the present industrial employer, the management, pursuant to a general and widely circulated advertisement published. The management selected and offered appointment to the claimant workmen after passing through an open recruitment procedure. They began to impart their services in the hospital premises of the management since the respective dates of their joining. The competent officer of the management, namely the Chief Executive Officer of the Delhi Cantonment Board in recording satisfactions to the performance on their respective posts, recurrently used to issue letter of extensions of the contract period every year till 01.07.2022. As such the claimant workmen, working on their respective posts under the direct supervision, control and instructions of the management continued to receive remuneration being on the pay roll and attendance sheet of the management. The practice of the management of employing the present claimants workmen to work against the substantively vacant posts as contractual workers continued in usual course even for a considerably long period of more than 240 days. The workmen are performing work of the same nature, expending the same working hours and bearing the responsibilities in same manner, as their regular counterparts who are getting their salary in regular pay scale along with all allowances.

8. The claimant workmen in proof of pleading to the above facts in the present industrial dispute and in the instant complaint against the management, have submitted their personal affidavits annexing there with photostat copies of all the relevant documents, like the advertisement published by the management intending direct recruitment of workers who fulfills the prescribed eligibility criteria, age and

the terms conditions of the para medical and pharmaceutical services in the hospital of the management. The Photostat copies of appointment letter of initial joining, and that of year to year extension till the year 2022, the letter of engagement recording satisfaction as to the work and performance of duties, extracts from the attendance sheet showing their continuous service much more than 240 days with the present management till July 2022. All the documentary evidence so filed on affidavit stand un-rebutted and not denied.

9. In written statement of defense to the claim statement and also in the reply to both of the instant application for the above ad interim reliefs and the complaint under section 33 of the Act, the management pleaded and deposed in supporting affidavits that, the workmen who were in service of the management under a contract of service with the management itself for a period of three months only from the date of appointment, which expired by the efflux of stipulated time respectively on 10.07.2022 (of Mr. Kamlesh Panwar and Mr. Ramesh Chand Chaudhary), 14.06.2022 (of Mr. Rajesh Kumar), 15.06.2022 (of Mr. Gangesh), 03.07.2022 (of Mr. Gaurav Panwar), 04.08.2022 (of Ms. Manisha Bhatt), 10.08.2022 (of Ms. Archana Kumari), 19.08.2022 (of Ms. Ankita Pundir). In the context of the above timeline the management has further pleaded that on 01.07.2022 an independent contractor namely M/S Raider Security Services Pvt. Ltd. took over the work of providing paramedical service in the hospital of the management. Thereby the existing contract of claimant workmen's contract came to an end on 01.07.2022. The management in their reply to the instant application, has further asserted and reiterated that the services of the claimants workmen have come to an end by efflux of time.

10. The management has also filed photo copies of the documents relevant to their defense with affidavit in evidence. There is none of the documents in contradiction with the documents filed by the claimant. The documents filed by the management tend to show that except 21 out of the 55 existing paramedical staff have accepted the fresh contract of service as to a short term appointment of three months designed to come at an end before the expiry of the usual term of yearly contract of service for the year 2021-22 and near to the date of enforcing the outsourcing agreement between the independent contractor and the management. The print out from gem portal is placed on record to show the exercise of entering into contract for service of providing contract Labour as para medical and Pharma staff in the CG Hospital between the management and the independent contractor. though outsourcing. Contract for service of outsourcing entered between the independent contractor and management is not brought on record. Even any letter of instructions if any issued to the independent contractor to preserve and maintain the terms and conditions of service like wages, emoluments and status in employment is also not brought on record. Any proposed contract of service between the independent contractor and the contract labour

intended to be outsourced to the management is also not brought on record, though relevant to the issues involved in the matter in hand.

Arguments

11. Heard the learned counsel Sh. Rajiv Agarwal Advocate (the authorized representative of the workmen claimants) at a considerable length of the time. He has also filed written note of the arguments with the compilation of the case laws relied by him. The counsel for the management also has filed his arguments in writing but did not appear to argue orally, though was called upon repeatedly deferring the hearing on several dates till the next adjourned date of hearing. However, the written arguments with the compilation of case laws relied on by the management is taken into consideration by the tribunal.

The learned counsel Sh. Rajiv Agarwal for the claimant workmen put vehemence on the fact, the management has the permanent nature of work of the para medical staff having been performed by the concerned workmen in the hospital owned, controlled and supervised by the officers of the management, the Delhi Cantonment Board in its own premises. The concerned workmen were directly recruited by the management itself in due course of open selection pursuant to an advertisement. The requirement of the post and work in issue still exist in the hospital. They despite working continuously for mor than 10 years to the entire satisfaction of the authorities were kept in temporary status of contact based workmen, without regularizing in service. When demand raised before the management they threatened to ward off the. From the employment and began to plan to get rid of them. In this connection they though extended their services for the year 2021- 2022 also, as usual since the initial entrance in the contract based service, directed such workmen to come afresh through an independent contractor of their choice as outsourced employees. This occurred during the pendency of proceeding after raising the dispute relating to the continuation of service and consequent claim of regularization before the assistant labor commissioner. This is why the claimant approached the High Court which on the basis of admission of the respondents management relating to existing industrial dispute enjoined them vide order dated 07.07.2022, not to disturb the service of the claimant workmen during the pendency of the Industrial dispute and rather to maintain status quo in respect of the service conditions. this is why the management to defy the claim of regularization broken the continued chain of service tenure under the contract of service entered directly between the management and the concerned workmen. Learned counsel Sh. Rajiv Agarwal argued, the circumstances as created by the management effect prejudicially the claimant workmen in respect of their claim and the cessation of work, stoppage of the payment of wages cumulatively amount clear violation of the mandatory prohibition of the section 33 of the Act and also the contemptuous breach of the order of the High Court by disturbing the services of the

concerned workmen and also by altering their service conditions. This compelled the Claimants to move the instant applications. The action of the management is quite illegal and ineffective by reason of being opposed to the prohibition mandated by the Act under section 33 and also in breach of the high court's restraining order in the matter. The prayers made in the applications deserves to be allowed.

He relied on the case law propounded by the apex court in ***Jaipur Zola Sahkari Bhoomi Vikas Bank v. Ram Gopal Sharma and others (2002) 2 SCC 244.*** *and* ***M.D.T.N. State Transport Corporation V. Nithivilangan Kumbakonam and others (2001) Lab. I. C. 1801*** Reliance is further placed on the decision of the High Court of Delhi in the case, titled as ***Tops Security Ltd. V. Subhash Chander jha (2013) 136 FLR 17)*** which covers the impugned order Order of dismissal covered under section 33 (2) (b) of the Act. Another case of the same high court is a decision bench judgement titled as ***Jitendra Kumar V. Director of Health Services, Govt of NCT of Delhi (L P A 79/2014 with LPA 731/2014 yogendra Kumar and others v. Director Health Services Govt of NCT Delhi decided on 22 October 2019)*** The facts considered in the above judgement of the Division Bench are somehow akin to the facts of the present matter in hand.

12. The management also on the basis of it's evidence in the form of affidavit with annexed documentary evidence put written argument. Though the learned counsel desisted himself from oral arguments but whatever resonates from his written argument and documents in evidence is apprised further as follows-

The management has neither changed or altered any of the conditions of service of the claimant workmen concerned in the present industrial dispute on or after the order of the high court dated 07.07.2022, as they had already been placed by the management under the independent contractor, "M/s Raider Security Services Pvt. Ltd." w.e.f. 01.07.20022. He impressed on the date 01.07.2022 being a date prior to the initiation of proceeding under section 33 of the Act when the workmen had been placed under the independent contractor aforesaid and since the workmen themselves have refused to join the independent contractor, the management neither can be held responsible for violation of the prohibition of section 33 of the Act nor for the alleged breach of the restraining order of the high court dated 07.07.2022.

It is further argued that the concerned workmen were working under a time bound contract of service and their employment automatically ceased off by reason of the efflux of time stipulated in their contract with the management. Management did not change the conditions of service of the claimant workmen. He relied in this regard on the case law propounded by the Hon'ble Delhi High Court in the case titled as ***B.A. Security Agents Employees Union v. Regional Labour Commissioner W.P. No.8372/2003 decided on 08.03.2010.*** and on the case law of the judgement of the

apex court in ***The Bhavhagar Municipality V. Alibhai Karimbhai and Ors. (Manu/ SC /0162/1977)***

The jurisdiction of the tribunal is also challenged to entertain and decide the instant application seeking directions to maintain status quo in terms of the order dated 29.06.2022 of the Hon'ble High Court passed in the writ petition no. WP (C) 9645/2022, and impressed that the aggrieved claimant workmen has the only remedy to resort, approaching the Hon'ble High Court of Delhi in contempt petition. It is contended that the concerned claimants have filed the contempt petitions which still remain on board before the Hon'ble High Court.

After going through the oral argument and that submitted in writings as well as perusing the documentary evidences adduced by the parties to the present industrial dispute I, proceeded further to consider the application under section 33 in accordance with the provisions of section 33 A of the Act. The Application complaining the breach of restraining order dated 29.06.2022 (supra) is also taken into consideration simultaneously and jointly.

Discussions

13. What is the mandate, as legislated by the parliament in the Act under it's section 33, must be kept in to the mind by an industrial adjudicator while considering the complaint made therein by the employee against the employer of disturbances caused by him without compliance of the pre requisite permission from the tribunal. In nut shell, section 33 (1) (a) of the Act mandatorily envisages a material prohibition to the employers that "*During the pendency of any proceeding before a.......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.

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Save with the express permission in writing of the authority before which the proceeding is pending.

(relevant portion carved out from the text of sec.33 of the Act, Supra)

This would not be out of relevance to highlight the circumstances envisaged in section 33 under which the mandatory prohibition clinches an employer not to alter the conditions of the service of a workman without prior permission of the authority of the tribunal before which the concerned dispute is pending. They are as under-

(1) There is a proceeding in respect of an industrial dispute before the tribunal or an

authority under the Act.

(2) Conditions of service of the concerned workman(s) applicable immediately before the commencement of the proceeding as to the dispute before the tribunal.

(3). The workmen whose conditions of service are altered must be concerned in the pending industrial dispute.

(4) The alteration of the conditions of service must be in regard to the matter connected with service.

(5) The complained alteration in the conditions of service is to the prejudice of the workmen.

14. The first feature admittedly exists in the present matter in hand. The pending industrial dispute of which the proceeding is running before this tribunal is contested by the management. The foremost question for consideration of both the above misc. applications would be

"***When from the Industrial Dispute shall be treated pending before authorities constituted under the Act*** "

a. The high court has recorded in its order (Supra) on dated 29.06.2022 itself, that admittedly the petitioners (the claimant workmen) ***have already raised an industrial dispute.*** The reference is evidencing itself the pendency of the industrial dispute **since 27.06.2022.** when the claimant workmen's Labour Union raised the dispute relating to the regularization of the claimants in services of the management raised before the authorities under the Industrial Disputes Act 1947. The records show that the said industrial dispute raised on 27.06.2022 before the Labour conciliation officer Which in continuation thereto was sent through the reference dated 27.04.2023 to the tribunal by the government u/s 10 of the Act and is pending for adjudication.

b. Coming back to the application in the hand, it further would be necessary and expedient to look into the defense, if any, against the complaint of violation of the direction of the court. It would also be equally important to see, if they actually caused disturbance in the service conditions despite the pendency of dispute before the tribunal in utter violation of the statutory mandate incorporated in the section 33 of the Act, what shall be the consequences and legal impacts?

c. The dispute pending before the tribunal referred for adjudication is with regard to the demand of the workmen for regularization of their services and none else as it is very much clear from the wordings of the 'reference' cited in preceding para 5 of this order. On perusal of the letter of reference dated 27.04.2023, it reveals that the said dispute was raised by the Labour union namely the Hospital Employees

Union vide it's letter dated 27.06.2022. **Therefore, I, reached at the conclusion that, the present industrial dispute came into existence before the Conciliation Officer appointed authority under the Act since 27.06.2022 and is pending presently before the Tribunal through the reference of dispute by the appropriate government dated 27.04.2023. The management remained mandatorily abide not only under the provisions of section 33 of the Act but also restrained by Hon'ble High Court's order Dated 29.06.2022 (Supra) from disturbing the service conditions of the claimant workmen and not to terminate any how their services during the pendency of the present industrial dispute case before the tribunal.**

Terms and conditions of service

d. A contract of employment is a kind of contract used in Labour law to attribute rights and responsibilities between Parties to a bargain. The contract is in between an employer and an employee. Undoubtedly, the dispute relating to a workman's regularization in services of the management comes within the scope of the phrase 'terms of employment' and 'connected with the employment', hence covered under the definition of 'Industrial Dispute' as given in section 2 (k) of the Act. Moreover length of continuous service satisfactorily also ensues some likewise the term 'Regularization in service' presupposes the continuation in employment and service of an employer for a considerable long period. The continuation in service envisages several legal rights and benefits to the workman in the Act against the termination, removal or discharge from service, change in terms and conditions of service etc. unless the employer strictly complies with the provisions of the Act. The Act further prohibits the employer to adopt unfair Labour practices in employment and service under their establishment. The contract of service is entered in the present case directly between the workmen and employer the present management individually. In the absence of any service rule governing the terms and conditions of service such contract of service is regulated, beside the terms stipulated between the parties to the contract, also by the standing orders applicable in the establishment or in the absence of such standing orders from the general provisions of the Standing Orders Act. Like other contract a contract of service too is subject to the relevant provisions of the Indian Contract Act, 1872. In short, a contract of service not only abides the employee but equally abides the employer also, both of them at par in relation to the terms of contract.

e. In the contract of service the employer is in the shoes of master, but subject to the law applicable over such contract. In the above context the rights and protection flowing from the acceptance of the offer of employment by the employee as to

the identity of employer also becomes one of the terms/conditions of service. It amounts the parity of mind between the parties under the contract of service, which means the employee must certainly know who is his master and likewise the employer must also know certainly, who is his servant under the contract, The consented assumption of inter se status of parties to the contract of service is therefore comes under the terms and conditions of service, longevity of uninterrupted satisfactory service in the same employment would be substantially considered for the claimants' regularization Th***e terms and conditions of service therefore include the status of employer as master in relation to the status of workman as servant under the contract of service which cannot be abruptly altered, substituted or alienated with another person.***

f. Beside the said term and conditions of service the workmen were entitled to wages at a fixed rate and other facilities and incidental right and benefits there to which were applicable on and since before the date of industrial dispute came in to existence. I, according to my considered opinion hold that, ***The alteration in terms of the services are undoubtedly connected with the industrial dispute with which the claimant are concerned which is pending before this Tribunal for adjudication.***

Prejudice to the claimant workmen

15. In the present case, one of the party to the contract of service, say the employer management altered the term and condition of service with regard to their known and accepted mastership by alienating the same to some other independent contractor during the continuance of the service contract with the workmen concerned. The management treated the employees as their slaves alienable like in slavery as prevailed in ancient days. They admittedly directed to the workmen to come through the outsourcing under the contractor of their choice.

16. So far as the alteration in terms of service is concerned, the Hon'ble High Court passed the order dated 29.06.2022 issuing direction that the management shall not disturb the services of the present claimant workmen during the pendency of the dispute before the tribunal without compliance of the provisions as contained in section 33 of the Act. The para 10 of the order of the High Court containing the said direction is quoted in preceding para 5 of this order. Para 6 of the High Court's order refers the communication dated 27.06.2022 made by the Assistant Labour Commissioner, U.O.I., who had advised the management to adhere to the provisions as contained in section 33 of the Act in letter and spirit and not to terminate the

services in order to avoid any untoward incident.

17. The tribunal has already reached at the conclusion that the dispute is pending since the stage of the competent authority under the Act the Assistant Labour Commissioner/ the Conciliation Officer even on 27.06.2022

18. The tribunal is amazed of the fact, nothing could have prevented the management, neither restraining order of the Hon'ble High Court nor the strict statutory prohibition contained in section 33 of the Act from daringly disturbing the services of the workman concerned with the industrial dispute pending in the tribunal. The management seemed to have designed the outsourcing of it's own workmen to defy their claim of regularization and to ward off them from attending their duties without formal order of termination or cancellation of the contract of service.

19. In the absence of the documentary evidences as to the terms of contract for service of outsourcing entered between the management and the independent contractor, it cannot be believed as pleaded and argued by the management that continuity of employment in the hospital and wages shall not be disturbed by the outsourcing contractor.

20. The evidence brought on record of the case by the management shows also that they were in hurry and haste to get rid of the claimants workmen pursuant to their raising claim of regularization in services. The print out of gem portal contents show that the management did not bother to search any independent contractor for outsourcing having experience in the field of medical, paramedics or pharmaceutical staff to meet the requirements in the hospital of the management. They have given the above services to an independent contractor in the field of outsourcing the security staff, therefore it cannot be said that they disturbed the existing services of the claimant workmen concerned with a view to improve their paramedical and pharmaceuticals staffs in the hospital.

21. In the already existing contract of service between the management and the claimant the terms stipulated therein are enforceable under law by the claimant, but in case of the employment under the outsourcing contractor the claimant would not be entitled to seek enforcement of the terms against him at par with that were available in earlier appointment in the management. It would be fit in the circumstance of the present case to quote observation of the apex court in the case of the **"Workmen of the Food Corporation of India v. Food Corporation of India 1985 (50) FLR 142 (SC) –**

> "15….When workmen working under an employer are told that they have ceased to be workmen of that employer, and have become work men of another

employer namely, the contractor in this case, in legal parlance such an act of the first employer constitutes discharge, termination of service or retrenchment by whatsoever name called and a fresh employment by another employer namely, the contractor. If the termination of service by the first employer is contrary to the well established legal position the effect of the employment by the second employer is wholly irrelevant…"

22. The management has failed to show the employment of claimant workmen in the hospital short term temporary job. It is also neither pleaded nor shown that recruitment of the claimant was under any scheme or short term project work incidental to the core business of the management which was bound to come at end automatically with the completion of work or efflux of the stipulated time. The tribunal does not agree with the argument of the management that the prohibition of the section 33 (1) (b) not applicable in the cessation of work of the claimant workmen concerned with the dispute. The case laws cited by the management are not applicable in the peculiar facts and circumstances of the present case

23. ***Consequent upon the above observations I, find myself of the opinion that alteration and disturbance in the services of the claimants are in prejudice to them.***

24. **I further conclusively hold that the status of the workmen concerned as on and prior to 27.06.2022 as the employee of the present management working under the direct contract with it shall stand continued on the date of the order of the high court on 29.06.2022 and also on the date 01.07.2022. It shall be treated continued even on the date of reference on 27.04.2023 to the Tribunal. Even today the same status of the claimant workmen exists during the pendency of the industrial dispute before the tribunal.**

25. **I further hold that the management in utter violation of the prohibition as mandated in the section 33 of the Act not only changed the status of employment of the workmen concerned abruptly but also designed to ward of them to join their duty without any order of termination, removal or discharge from their service continued under the contract of service with the management. The present complaint therefore is covered with the provision of section 33(1)(a) of the Act and the protection of the prohibition is available to the claimants.**

26. There is quite an admitted fact, the management, throughout for a considerable long spawn of more than 10 years of the service period of present workmen, have no complaint against them with regard to any misconduct. To the contrary the contract based services of the workmen were remained extended year to year by the competent authorities of the management recording their satisfaction as to the works assigned to them by express orders in writing. The workmen were confidently discharging their services under the direct control, supervision and pay rolls of the management. They

were under the legitimate expectations of their continuation with the management. The services of the claimant workmen were abruptly ceased off. There is no order of the termination, dismissal or discharge from the services by the management for the reason of any misconduct not connected with the service, hence the case in hand is constructively covered with the provision of section 33(2) (b). The claimant workmen are not being paid their salary from July 2022, some of them are refused from attending their duties since 15.07.2022 and others since August 2022 by the management on the pretext automatic termination of service consequent upon the abrupt alteration of terms and conditions of service illegally. As such the age of the claimants workmen are covered with section 33 (1)(a) of the Act. The tribunal has already reached at the conclusion that the dispute is pending since the stage of the competent authority under the Act before the Assistant Labour Commissioner/ the Conciliation Officer even on 27.06.20222.

27. The management still delve under misconception of law that section 33 will not apply to it's action of shifting the claimant workmen from it's direct employment to an independent contractor to outsourcing. for the reason it happened prior to the dispute under section 33 is brought before the tribunal. The argument is baseless and not agreeable. Much has been discussed in the preceding paras in this regard.

28. Consequent upon the above observations, I **further conclusively hold that the status of the workmen concerned as on and prior to 27.06.2022 as the employee of the present management working under the direct contract with it shall stand continued on the date of the order of the Hon'ble High Court on 29.06.2022 and also on the date 01.07.2022. It shall be treated continued even on the date of reference on 27.04.2023 to the tribunal. Even today the same status of the claimant workmen exists during the pendency of the industrial dispute before the tribunal**

29. The above finding finds support from the judgement of the apex court in the case of ***Jaipur Zila Sahaai Bank*** (Supra) where it is held that in case of non-approval of the dismissal etc. from service under the circumstances envisaged in section 33(2) (b) the employee continues to be in service as if the order of discharge or dismissal has never been passed. In the present case where the alteration in terms and conditions exulted into the oral termination of service the above quoted case law will apply principally as the require permission was not sought by the management.

30. The another misc. application of the claimant workmen for issuing direction to the management shall stand disposed off. The order dated 29.06.2022 of the Delhi High Court (Supra) putting restraint over the management to maintain status quo is intended to secure the concerned workmen from any untoward incident resulting from alleged apprehension of possible disturbance in service with regard to which the

management admitted pendency of industrial dispute and any contravention of the prohibitions contained in section 33 of the Act would be amenable before the tribunal concerned. The tribunal in spirit to follow the judicial order of the Hon'ble court and the statutory mandate as legislated in the Act, by the parliament, the tribunal has exercised it's power and discretion vested in it by virtue of the section 33 r/w 33A of the Act has eager to decide the complaint by means of an ad interim award the instant application for direction to maintain the status quo is therefore instantly disposed off.

31. I***n deciding the instant application under section 33 of the Act the tribunal has confined itself to the merit of the complained contravention of the mandatory prohibition by the management only. The possible issues which might arise in adjudicating the concerned workmen's claim of regularization in service of management is left untouched. That shall be decided in proceeding with the I.D.116/23.***

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32. The office is directed to list the I.D.116//23 for framing of issues in the third week of November.

Parting with the discussion over the complained matte in the instant misc. application under section 33 of the Act I, conclude as follows -

(a) The management though contesting the present workmen's claim of 'regularization in services' in pending dispute since the stage before the conciliation officer on 27.06.2022 then also disturbed their services, refused them from attending duties, stopped wages and designed to cause cessation of services since 15.07.2022 and August 2022, despite the restraining order of the Hon'ble High Court dated 29.06.2022

(b) In utter violation of the prohibition contained in section 33 of the Act, the management altered the terms and conditions of service of the workmen concerned and also caused cessation of their service abruptly to their prejudice.

(c) Services of the workmen concerned ceased off since 15.07.2022 and August 2022 without passing any formal order of termination of service illegally and opposed to the provision of section 33 of the Act as required prior permission was not sought from the competent authority/ tribunal where the industrial dispute with regard to the regularization remained pending.

(d) The work having been performed by the claimant workmen in the hospital of management is neither time bound project work nor short term job under any scheme which deserves to come to an end automatically or with the completion of work. The work and services assigned to the claimant workmen is of permanent

nature, though contract based employment but subject to extensions.

(e) The contract of service entered between the management and the claimant workmen was illegally alienated to a third party to the contract who is an independent contractor for providing service through outsourcing. This was done only to get rid of the pending industrial dispute as to the claim of the claimant workmen of regularization.

(f) The provisions of section 33 is violated in prejudice to the claimant workmen concerned in the industrial dispute presently pending in the tribunal. The action of stopping the payment of wages since July 2022, refusal from allowing the workmen to attend duties since 15.07.2022 and August 2022 thereby causing cessation of services is in effective and the services of the workmen concerned shall be treated to remain continued as was on and before the date of dispute i.e., 27.06.2022.

Consequent upon the above conclusions the application of the workmen under section 33 is allowed. An ad interim award till the final adjudication of the Industrial Dispute case no. 116/2023 is passed in following terms-

Ad interim award

The misc. application under section 33 of the Industrial Dispute Act, 1947, moved by the claimant workmen concerned in the industrial dispute pending in this tribunal against the management is allowed on finding the management have committed contravention of the prohibitive provisions mandated therein. The tribunal in accordance with the section 33 A of the Act draws an ad interim award in the following terms-

(i) The Workmen concerned, in the industrial dispute pending in this tribunal registered as *I.D.116/2023, "Kamlesh Panwar and 7 other v. Delhi Cantonment Board"* shall be allowed by the management to attend duties on their respective posts in the hospital of the management forthwith without unreasonable delay and to pay them their wages uninterrupted till the adjudication of the concerned Industrial Dispute case under the reference dated 27.04.2023, to this tribunal by the Central Government under section, 10 of the Act.

(ii) The management shall pay the arrears of wages kept unpaid to the claimant workmen since July 2022 till date forth with without unreasonable delay within a maximum period of one month from the date of award, otherwise penal interest at the rate of 18% per annum shall be chargeable till the date of actual payment.

(iii) The cost of litigation and compensation on vexations is awarded to the workmen against the management to the tune of Rs.10,000/= (ten thousands only) payable

to each one of the eight claimants workmen individually within a period of 30 days, otherwise the same shall be recoverable with interest at the rate of 18% per annum as land revenue.

The office is directed to communicate and submit the ad interim award to the Government in due course of procedure for implementation and necessary action.

Date: **(Justice Vikas Kunvar Sirvastava)**
Former Judge, Alld. High Court
Presiding Officer