

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

I.D. No.68 /2024

Manoj Kumar & Ors.

Vs.

Maharishi Valmiki Hospital & Anr.

Misc App.No. 30 / 24 (complaint u/s 33 ID Act)

Sh. Rajiv Agarwal, Siddharth Sapra, Navalendu Bhushan,

Advocates, A/Rs for workmen

Ms. Bhanita Patowary, Advocate for Management

ORDER

Justice Vikas Kunvar Srivastava (Retd.)

(Presiding Officer)

Prologue

1. This order is intended to decide the prayer of the workmen seeking interim protection against the recruitment process being conducted by the management *vide* the advertisement (vacancy notice) issued on 31.07.2023, pending the present industrial dispute before this Tribunal. In the complaint under Section 33 of the I.D. Act, 1947, protection is sought to the extent that Advertisement No. 02/23 (vacancy notice) dated 31.07.2023 be stayed in relation to the posts of OT Technicians, CSSD Technicians, OT Assistants, and Radiographers, and/or that a total of 7 posts in their respective categories (i.e., 2 OT Technicians, 1 CSSD Technician, 3 OT Assistants, and 1 Radiographer) be reserved till the pendency of the present industrial dispute. The said advertisement was issued by the Deputy Secretary (P&P-1), DSSSB, Government of NCT of Delhi, for the recruitment of various Group B & C posts.

2. The present industrial dispute raised by the concerned workmen, Manoj Kumar & 6 others, through the Labour Union "*Hospital Employees' Union*" before the labour authorities on 28.08.2023, pertains to their regularisation in service. They have been duly appointed and posted as OT Technicians, CSSD Technicians, OT Assistants, and Radiographers in the said hospital, where they have been working continuously and uninterruptedly since their initial appointments in 2000-2001 to till date. After the failure to conciliate before the labour authority, the dispute was referred by the appropriate government for adjudication to this tribunal, and it is currently registered and pending as I.D. Case No. 68 of 2024 since 05.03.2024. The industrial dispute, as scheduled in the letter of reference **ND-25/III-2/2024-IR** dated 05.03.2024, is reproduced below:

“1. Whether the Central Govt. is appropriate Govt. for management of Maharishi Valmiki Hospital and Department of Health & Family Welfare, GNCT of Delhi u/s 2(a) of the Industrial Disputes Act 1947?

2. If so, whether the demand of Shri Manoj Kumar & 6 others (details mentioned in Annexure-A) through Hospital Employees Union for regularisation in services with retrospective effect from initial date of their joining into employment and payment of difference of salary on the principal 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?

3. Whether the one time regularization policy of Department of Health & Family Welfare, GNCT of Delhi vide OM NO. F- 8/279/H&F/Nursing/2016/14633-39 dated 11.20.2020 is legal? And if no, what relief the workmen concerned are entitled and what directions are necessary in this respect?”

3. The material facts raising the present industrial dispute are that, workmen though appointed on vacant posts through an open competitive written examination and interview from amongst candidates who fulfilled eligibility criterion of OT Technicians, CSSD Technicians, OT Assistant, Radiographer followed by medical test and police verification in accordance with prescribed recruitment rules. The work assigned to them is regular, permanent and perennial in nature, still today a number of posts are lying vacant then also, they are treated merely contractual employees and paying lesser remuneration than those doing identical works in similar working conditions. They are retained as such without permanence in service and regularisation. The practice of the management of employing the concerned workmen in work against posts permanent in nature on contract basis even long after the continuous service more than 240 days, in itself tantamount to unfair labour practice as defined under section 2(ra) read with item no 10 of fifth schedule of the Industrial Dispute Act, 1947. Management in utter violation of Article 14 of the Constitution of India illegally discriminate the claimants with their counterparts in regular service by not following the principle of equal pay for equal work and in violation of section 4 of the Equal Remuneration Act, 1976. On the record several office orders issued from time to time with by the management of Maharishi Valmiki Hospital, Government of NCT Delhi are placed by the workmen which on perusal obviously tend to establish that workmen concerned were duly recruited against sanctioned and respective vacant posts of OT Technicians, CSSD Technicians, OT Assistant, Radiographer and they are retained in work on those post as such even for a long say more than a decade by issuing letters of extension of their services.

4. **Written statement** as against the statement of claim is filed by the management and reply to the complaint opposing the prayer of interim relief is quickly submitted on 01.08.2024. Management submits that this Tribunal does not have the jurisdiction to adjudicate the present case as the workmen herein were appointed purely on contract/ad-hoc basis. It is contended that the workmen were engaged without going through any selection processes and without touching the merits or qualifying through any competition. The management has also contended on the aspect of jurisdiction that this Tribunal (being the Central Government

Industrial Tribunal-cum-Labour Court) does not have the jurisdiction to adjudicate the present dispute as the management comes within the purview of Government of NCT of Delhi. The management has also stated that the prayer of regularisation sought by the workmen concerned is impermissible due to the constitution bench judgement of Hon'ble Supreme Court in ***Secretary State Of Karnataka Vs. Uma Devi, (2006) 4 SCC 1.***

5. The management submits that pursuant to the judgement of Delhi High Court in ***Sonia Gandhi & Others Vs. Govt. of NCT of Delhi*** dated 6 November 2013 Government has assessed and created for filling up through DSSSB for 8014 posts from 6.11.2013 to October 2017. Contractual employees engaged in the Health and Family Welfare of GNCTD were given age relaxation in the Recruitment Rules which continued for 5 years for all such posts. The contractual staff had already availed opportunities given from 2011 and onward. Government has further decided to give one time age relaxation to the contractual employees of all departments for the number of years they have worked maximum up to 5 years *vide* office memo dated 11.6.2019 and 10.7.2019. It is stated that the office memo dated 11.10.2020 provides that a contractual employee in the Health Department as on 26.11. 2013 could participate in the regular selection exam without any age bar. It is informed that a similar issue has been raised before the High Court which has refused to stay the advertisement vide order dated 29.8.2023 in WP(C) No.12117/2023.

ARGUMENTS:

6. The instant reply of the management, opposing the apprehension of the concerned workmen and their prayer for interim protection, when taken into consideration, reveals that the fact of recruitment, selection, and appointment of the concerned workmen against sanctioned and vacant posts of OT Technicians, CSSD Technicians, OT Assistants, and Radiographers, made long ago in the years 2000-2001 on a contract basis following the prescribed recruitment process, is not denied, and hence, admitted. The issue for adjudication of their right to be regularised would be whether they should be regularised to compete with direct applicants under the advertisement in question or be given the benefit of longevity of continuous service, even much more than the 240 days required under the ID Act, as they have already fulfilled the eligibility criteria and were appointed following the prescribed procedure. Moreover, they have been given extensions of their services for more than 10 years in posts of a permanent nature, with the satisfaction of the competent authorities. The workmen apprehend a risk of losing their employment, as success in competition may depend on their fortune after spending a valuable and long portion of their lives in service to the management.

7. It is argued by the Learned Sh. Rajiv Agarwal, Advocate, that the subject matter of the present dispute referred by the government for adjudication pertains to the claimant's demand for regularisation in service. The subject matter of the dispute is, thus, the 'right' accrued to the contract-based workmen to seek the status of permanent employees through regularisation, as they have been continuously working under the management since the date of their initial joining until now, discharging duties as OT Technicians, CSSD Technicians, OT Assistants, and Radiographers. In other words, the subject matter concerns the "*terms and conditions*" of

service, such as continuous service for much more than the 240 days required under the law. The advertisement in question includes direct recruitment for the posts of OT Technicians, CSSD Technicians, OT Assistants, and Radiographers. The workmen concerned are apprehensive of an imminent threat to their employment, fearing that someone newly recruited will replace them, and their services will be terminated before the tribunal adjudicates the dispute and passes a possible award on the matter of regularisation. In this way, the claimants would be thrown out of their jobs, which are their source of livelihood for themselves and their families. The learned counsel has urged for the operation and enforcement of the advertisement in question, meant to directly recruit staff for the institution, to be stayed. However, he neither quotes nor refers to any provision to support the prayer for such an ad-interim stay, nor relies on any case law propounded by the Apex Court or our High Courts.

DISCUSSION

8. Section 11(3) of the Act provides that the tribunal shall be deemed to conduct judicial proceedings while making any inquiry or investigation under the Act. Thus, when the tribunal assumes the power to conduct judicial proceedings in a quasi-judicial jurisdiction, it must exercise sound judicial discretion to secure the ends of justice. This is particularly important where the provisions of the Act and the Rules thereunder are silent, but subject to the limitation that such discretion would not be in derogation, repugnancy, or opposition to any express provision of the Act and Rules. I must say, there is no express prohibition on issuing an interim order in appropriate circumstances to secure the ends of justice.

9. Moreover, the Act itself, to prevent any untoward incident with regard to the subject matter of an industrial dispute during its pendency before the tribunal for adjudication, mandates very stringent prohibitions against the employer in Section 33 of the Act. Section 33 of the Act is captioned as “*conditions of service, etc., to remain unchanged under certain circumstances during the pendency of proceedings.*” Though in the instant application no such circumstances are set forth by the workmen to exist, and it is simply an ‘apprehension’ in their mind that they might be removed, discharged, or terminated from service in the event of direct recruitment under the advertisement in question, their apprehension is not to be ignored. The tribunal is competent, in the exercise of its judicial discretion, to secure his services during the pendency of the industrial dispute in light of the stringent and mandatory prohibitions contained in Section 33 of the Act, so as to ensure the ends of justice. In this regard, the judgement of the Apex Court of India delivered in ***Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others, reported in (1995) 6 SCC 326, AIR 1996 Supreme Court 285***, is relevant. 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.

10. In the instant matter of the industrial dispute, which concerns the claim of regularization and permanence in employment based on the prolonged continuous engagement of the claimants as workmen on the posts they held under the Industrial Disputes Act, a complaint under Section 33 of the Industrial Disputes Act is also pending before this tribunal, alleging an interruption in terms and conditions by issuing an advertisement for the direct recruitment of fresh hands.

11. The roots and origin of the concept of interim/interlocutory orders in the Indian context can be traced to the provisions of Order 39 Rules 1, 2, and 3 of the CPC, which are repository powers to grant interim relief of temporary injunctions. The Industrial Tribunal-cum-Labour Court exercises a quasi-judicial function in adjudicating the industrial disputes referred to or brought before it. However, such adjudication presupposes that the tribunal proceeds in a judicial manner and with discretion. The Supreme Court of India has also propounded the same principle in **Colgate Palmolive (India) Ltd. vs. Hindustan Lever 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 interim/interlocutory/temporary orders by Indian courts. 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:

- 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.”*

12. 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”;

13. 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.”

CONCLUSION

14. In light of the discussions made hereinabove in the preceding paragraphs, it would be pertinent to note that the industrial dispute referred to this Tribunal by the appropriate government is with regard to the relief of regularisation and the same is pending for adjudication. If the terms and conditions of services are materially changed by the management, as the workmen apprehend in the complaint under section 33 before the Tribunal finally decides

and passes a possible award, the prayer for interim relief deserves to be allowed partly, with a view to preserve the subject matter of the present industrial dispute.

This tribunal does not find any just and reasonable cause to stay the operation and effect of advertisement (vacancy notice) no. 02/23 dated 31.07.2023. However, any appointment made shall be subject to the outcome of the adjudication of this industrial dispute pending before the Tribunal. For the sake of avoiding complications and ensuring compliance with the prohibition envisaged in section 33 of the I.D. Act, the management is expected to reserve at least 7 posts of their respective category (i.e., 2 OT Technicians, 1 CSSD Technician, 3 OT Assistants, and 1 Radiographer) covered under the advertisement in question, till the final adjudication of the claim or till further orders of the tribunal, whichever is earlier.

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

Date : 27.09.2024

Sudha Jain