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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11414/2022, CM APPL. 33631/2022

SH. SURESH CHANDRA SINGH ..... Petitioner

Through: Mr. Rajiv Agarwal, Adv.

versus

DELHI CANTONMENT BOARD & ANR. ..... Respondents

Through: Mr. Chiranjeet Kumar, Mr. Kaushik Kharbanda, Advs. for R-2.

Ms. Ritu Reniwal and Ms. Raavi Jotwani, Advs.

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\+ W.P.(C) 11415/2022, CM APPL. 33633/2022

ANCY THOMAS ..... Petitioner

Through: Mr. Rajiv Agarwal, Adv.

versus

DELHI CANTONMENT BOARD & ANR. ..... Respondents

Through: Mr.Sanjeev Kr. Baliyan and Mr. Anith Johnson, Advs. for R-2.

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\+ W.P.(C) 11416/2022, CM APPL. 33635/2022

PREM PRAKASH ..... Petitioner

Through: Mr. Rajiv Agarwal, Adv.

versus

DELHI CANTONMENT BOARD & ANR. ..... Respondents

Through: Mr. Raghvendra Shukla, Sr. Panel counsel with Mr. Anil Dev Lal, Govt. pleader for R-2/UOI

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\+ W.P.(C) 11417/2022, CM APPL. 33637/2022

VISHAL ..... Petitioner

Through: Mr. Rajiv Agarwal, Adv.

versus

DELHI CANTONMENT BOARD & ANR. ..... Respondents

Through: Mr. Chiranjiv Kumar, Mr. Mukesh Sachdeva, Mr. R. M. Tripathi, Advs. for R-2.

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\+ W.P.(C) 11418/2022, CM APPLs. 33639-40/2022

MANJEET SINGH ..... Petitioner

Through: Mr. Rajiv Agarwal, Adv.

versus

DELHI CANTONMENT BOARD & ANR. ..... Respondents

Through: Mr. Jitesh Vikram Srivastava, SPC, Adv. with Mr.Prajesh V. Srivastava, G.P. for R-2.

Date of Decision: 3rd August, 2022

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present writ petitions have been filed seeking following prayers:

> *"a) Issue an appropriate writ, order or direction, thereby directing the Respondent No. 1 to maintain status quo in the service conditions of the Petitioner and to continue with his services;*

b) Issue an appropriate writ, order or direction, thereby directing the Respondent No- 1 to comply with the direction/notice dated 08.07.2022 , 06.07.2022, 18.07.2022, 14.07.2022 passed by Union of India through the Assistant Labour Commissioner (Central), Ministry of Labour and Employment;

c) Issue an appropriate writ, order or direction, thereby directing the Respondent No. 1 not to change the service conditions of the workman by way of non-renewal of contract during the pendency of the industrial dispute without following the procedure under section 33 of the Industrial Disputes Act, 1947;"

2. Sh. Rajiv Agarwal, learned counsel for the petitioner submits that the respondents despite the directions issued by Union of India through Assistant Labour Commissioner (Central), Ministry of Labour and Employment vide communication dated 8th July, 2022 is bent upon changing the service conditions of the petitioners.

3. Learned counsel submits that it has been learnt that now the services of the paramedical staff is being outsourced and therefore some agreements have been entered into, between contractors and respondents. Learned counsel for the petitioner submits that the petitioners were direct employees of the respondent and now these employees are being placed under a contractor.

4. Learned counsel submits that placing the petitioners under contractors would amount to termination of the service and change in the conditions of their service.

5. Reliance has been placed on ***Workmen of the Food Corporation of India v. Food Coroporation of India*** (1985) 2 SCC 136 whereby it

was *inter alia* held as under:

> *"15…….. When workmen working under an employer are told that they have ceased to be the 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 thetermination 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….*"

6. Learned counsel submits that he has no other equally efficacious remedy except to file the present petition under Article 226 of the Constitution of India before this Court.

7. Learned counsel further submits that till date, the petitioners have not been formally intimated about them being placed under the contractor.

8. Issue notice.

9. Mr. Raghvendra Shukla, Mr. Jitesh Vikram Srivastava, Mr. Chiranjeet Kumar, Mr. Chiranjiv Kumar, learned counsel accepts notice on behalf of their respondents.

10. Per contra, Mr. Raghvendra Shukla, Mr. Jitesh Vikram Srivastava, Mr. Chiranjeet Kumar, Mr. Chiranjiv Kumar, learned counsel for the respondents submit that the writ petitions itself are not maintainable. It has been submitted that contract had already been entered into between the respondents and a private contractor and the services of the petitioners' have already been placed under the contractor. It has been submitted that however, there is no change in the service conditions of

the petitioners as they would continue to be on the same pay-scale and same benefits.

11. Learned counsel has submitted that in all these cases, the industrial disputes were raised after the contract had been entered into between the respondent and the private contractor. However, it has not been disputed that initially the petitioners were taken as direct employees of the respondent. Learned counsel, however submits that at the time of the initial appointment the petitioners were made aware that subsequently, the paramedical services shall be outsourced and they will be placed under a private contractor.

12. Learned counsel for the respondent further submits that as per his instructions, the names of the petitioners have already been removed from the muster roll of the contract.

13. I have heard the submissions and perused the record carefully.

14. In W.P.(C) 9645/2022 tilted as ***Kamlesh Panwar & Ors. v. Delhi Cantonment Board & Anr.***, the petitioners apprehended termination of their service despite pendency of an industrial dispute before the learned Labour Court seeking regularization in service along with equal pay for equal work. A communication was issued by the Assistant Labour Commissioner (Central), Ministry of Labour and Employment (Union of India).The facts are identical in nature as in that case also the respondent had issued a tender for outsourcing staff, and this Court taking into account the communication dated 27th June, 2022, wherein Government of India has advised the management i.e. Delhi

Cantonment Board to adhere to the provision of Section 33 of the Industrial Disputes Act, 1947, with respect to the service condition of the workmen involved in the disputes inter alia held as under :

> *"10. 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 Section 33 of the industrial Dispute Act, 1947."*

15. Subsequently, this Court in W.P.(C). 10290 of 2022 tilted as ***Reena Kumar Gaur & Ors. v. Delhi Contonment Board & Anr.,*** wherein also the facts are identical in nature *inter alia* held as under :

> *"9. It is an admitted fact that the petitioners have already raised an industrial dispute. It is made clear that the services of the petitioner shall not be disturbed during the pendency of the dispute before the Tribunal without compliance of Section 33 of the Industrial Disputes Act. Status quo shall be maintained in respect of the service condition of the petitioners.*
>
> *10. With the above directions, the present petition along with the pending application is disposed of. However, nothing contained herein, shall tantamount to any expression on the merits of the case. The rights and contentions of the parties are left open."*

16. It is an admitted case that these orders have not been challenged by the Delhi Cantonment Board as of now. However, learned counsel for the respondent has raised the issue of maintainability of the writ petition in the present case. The learned counsel for respondents have also submitted that there is an equally efficacious remedy as provided under Section 33A of the Industrial Disputes Act, 1947.

17. In ***Balko Captive Power Plant Mazdoor Sangh and Another v. National Thermal Power Corporation and Others,*** (2007) 14 SCC 234 it was *inter alia* held as under :

> *"19. Though no serious objection was made as to the maintainability of the writ petition, however, learned Senior Counsel appearing for the management pointed out that even if there is any breach by* Balco *of its obligations in the matter of terms and conditions of employment, the appellants have appropriate remedy under industrial law. Inasmuch as the claim of the employees relates to interpretation of certain clauses in the agreement and appointment letters and no disputed facts are involved and taking note of the fact that the issue relates to employment of few hundreds of employees and in the light of the assertion that transferring them to private organisation from a public sector undertaking without their specific consent is arbitrary and unreasonable and also of the settled position that alternative remedy is rule of discretion and not the rule of law, we accept the conclusion of the High Court and hold that the writ petitions under Article 226 of the Constitution filed by the employees are maintainable."*

18. Similarly, in ***Anaimalai National Estate Workers Union (representated by its General Secretary), Valparai, and Others v. Planters' Associtión of Tamil Naidu, Comimbatore, and others*** 2002 (4) L.L.N. 530 it was *inter alia* held as under:

> *"51. The nature and scope of the enquiry under S. 33-A of the Act, would my opinion) render the provision as an ineffective remedy and cannot be pleaded an effective alternative remedy so as to prevent the union to seek for the issue of a writ of mandamus to compel the employer to comply with the mandatory requirement under S. 33(1) of the Act. Resort to S. 33-A of the Act is nothing more than a fresh reference and another dispute and is not an effective remedy to maintain the* status quo*? In the following judgments, the Supreme Court had clearly held that the*

proceedings under S. 33-A of the Act is not different from a dispute arising out of a reference under S. 10 of the Act. For instance, in the case of dismissal of an employee in contravention of S. 33 of the Act, on a complaint under S. 33-A of the Act, the Tribunal has to separately deal with not only the question of contravention, but also the merits of the order of the dismissal.

(i)Punjab National Bank, Ltd. v. A.I.P.N.B.E. Federation [A.I.R. 1960 S.C. 160];

(ii)Delhi Cloth and General Mills Ltd. v. Rameshwar Dayal, [1960-61] 19 FJR 315; A.I.R. 1961 S.C. 689;

(iii)Bhavnagar Municipality v. A. Karimbai [(1977) 34 F.L.R. 279 (SC)].

52. Therefore, resort to S. 33-A of the Act is not at all an effective or an alternate remedy. It is in fact more complicated and long winding that the main dispute itself which is awaiting adjudication. The management which intentionally and with impunity violates S. 33(1) of the Act cannot be heard to plead that S. 33-A of the Act is an effective alternative remedy. The object of invocation of Art. 226 of the Constitution of India in a monstrous situation is intended to secure timely justice and a plea of alternative remedy cannot be entertained at the instance of a defaulting party.

53. The more appropriate ruling in this context would be the latest judgment of a Constitutional Bench of the Supreme Court in Jaipur Zilla Sahakari Bhoomi Vikas Bank, Ltd. v. Ram Gopal Sharma [2002 (1) L.L.N. 639]. In that case, the Supreme Court dealt with a provision similar to. S. 33(1) of the Act, namely, S. 33(2)(b) of the Act which requires the management to seek for approval of the discharge or dismissal of an employee during the pendency of the proceedings. The management took the stand that the union can only raise another dispute or forward a complaint under S. 31(1) or S. 33-A of the Act. The Constitution Bench came down heavily on such a plea and held that such a person who contravenes the provision "cannot be rewarded by relieving him of the statutory obligations created on him to make such an

application.

54. The Supreme Court went further to observe as follows:

> *"Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee It is only to punish the offender. The argument that S. 31 provides a remedy to an employee for contravention of S. 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under S. 33-A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under S. 33-A. There is nothing in Ss. 31, 33 and 33A to suggest otherwise even reading them together in the context. These sections are intended to serve different purposes."*

55. My conclusions as above are, therefore, fortified by the observations of the Constitution Bench and the plea of S. 33-A as being an alternate remedy cannot be sustained, more so in a case where it is the management which went before the conciliation officer. I am inclined to hold that the facts stated above and the situation having been brought about by the management itself, are more than sufficient to hold that the situation is a monstrous one enough to invoke the jurisdiction of this Court.

67. In conclusion, I find that the writ petitions are maintainable and the petitioners are entitled to the relief. It is true that the difficulties expressed by both Sri A.L. Somayaji and Sri Vijay Narayan, on behalf of the estates regarding the problems experienced by the plantation industry may be correct to a considerable extent. But when the statute requires that the existing service conditions cannot be altered to the disadvantage of the workers without a written permission from the authorities before whom the proceeding is pending, the employer cannot be heard to violate the same and to drive the workers to an inequitable position. It is only to enable the employer to alter the conditions of service even during the pendency of the dispute, the employer is

given the liberty and statutory right to move the authority for the said purpose. When such a petition is filed, the authority is bound to pass a considered order by taking into account all the materials and circumstances objectively. The authority would be performing a quasi-judicial function and therefore, bound to pass a reasoned order and if the PAT has enough materials to substantiate their claims, there need not be any hesitation on their part. The fact that the unions in other areas had come to amicable settlement will also be an added ground for the employer to justify their proposed action which cannot be ignored by the authority without proper material. When the statute prescribes a certain mode or procedure, the party who is obliged to comply with the same cannot be heard to violate the same and plead otherwise.

68. Therefore, the above writ petitions are allowed with liberty to the respondents to move the Conciliation Officer for permission under S. 33(1) of the Act before altering the conditions or service and till then, the respondents are bound to comply with the existing terms of the service conditions. No costs. Connected W P.M. Ps. are closed as unnecessary."

19. I consider that there is no substance in the issue raised by the respondent as to the maintainability of the writ petition in view of clear cut law laid down in the aforesaid judgments. The objection as to equally efficacious remedy is also liable to be rejected in view of the authoritative pronouncement of Supreme Court in ***Anaimalai National Estate Workers Union*** *(supra)*

20. There is no reason for this Court to differ with the earlier opinions expressed by this Court. The judicial discipline also requires that the Court can differ from its earlier precedents only if, there are supervening circumstances to differ.

21. It is an admitted case that the industrial disputes have already been raised. The respondents have not placed any material before this Court to show that the service condition had changed before the industrial disputes were raised. As of now, it is an admitted case that the industrial disputes are raised and Government of India has already advised the respondent to comply with the Section 33 of Industrial Disputes Act, 1947.

22. The plea of the respondent that their names have already been removed, if correct, is ex facie illegal and cannot be allowed during the pendency of industrial disputes before the learned Labour Court.

23. In these circumstances, the present writ petitions along with pending applications are disposed of with a direction to the respondents to not alter or change the service conditions of the petitioners till the pendency of industrial disputes before the learned Labour Court.

24. Needless to say, the respondents shall not alter the service conditions of the petitioners by placing them under the private contractor and shall continue with the same arrangement as they were, till the pendency of industrial disputes before the learned Labour Court.

25. The writ petitions stand disposed of.

DINESH KUMAR SHARMA, J

AUGUST 3, 2022
Pallavi