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

+ **CONT.CAS(C) 549/2011 & CM No. 20138/2011 (impleadment)**

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Judgment dated 12.03.2013

DAMODAR BHAGAT AND ORS

..... Petitioners

Through Ms. Amita Gupta, Advocate

versus

SIRAZ HUSSAIN

..... Respondent

Through Mr. Ajit Pudussery & Mr. Dinesh
Khurana, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

CM No. 13721/2011 (Ex-certified copies)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CONT.CAS(C) 549/2011

1. Counsel for the petitioners submits that the respondent have failed to comply with the directions contained in the judgment dated 15.09.2005.
2. Ms. Gupta, counsel for the petitioners submits that the petitioners were initially working as contract labour and had approached this Court by filing W.P. (C) No. 3474/2003 praying for re-employment by the Food Corporation of India . The writ petition was disposed of by an order dated 30.04.2004. The respondent being aggrieved by the said order, filed an LPA No. 682/2004 before the Division Bench which was decided on 15.09.2005. She further submits that

the respondent has been employing labour from another State only with a view to over reach the order passed by the Division Bench of this Court as the order had made abundantly clear that the respondent would maintain a seniority list of surplus labour depot wise and as and when there is work for which additional labour from outside is required to be deployed, the petitioner would be given preference.

3. Learned counsel for the respondent submits that no labour has been employed at Ludhiana after the passing of the order by the Division Bench. He further submits that as and when the labour is required for a short duration, the surplus labour which is already employed with DPOS is called upon to do the necessary work. Counsel further submits that the petitioner had approached this Court earlier by filing CCP No. 1030/2006 which was dismissed and thus a second contempt petition is not maintainable.

4. Ms. Gupta, counsel for the petitioners submits that earlier contempt petition was on different grounds, which are not subject matter of the present petition.

5. I have heard learned counsel for the parties and carefully perused the judgment of the Single Judge and also the Division Bench. The concluding portion of the judgment which is sought to be relied upon by learned counsel for the petitioner reads as under:-

“The counsel for the appellant in fact very fairly states that the appellant will maintain a seniority list of the surplus labor depot

wise so far as this particular depot is concerned (including the names of the respondents) and as and when there is work for which additional labour from outside is required to be deployed, the respondents shall be given preference and would be given work at the said depot. We accordingly pass an order in that regard in terms of statement made. The appeal accordingly stands disposed of. No costs.”

6. The Division Bench had clearly noticed the submissions of both the parties and had categorically observed that they are not expressing any opinion with regard to the transfer policy of the respondent. Paragraphs 9 to 11 of the judgment of the Division Bench, read as under:

9. “Being aggrieved by the aforesaid judgment and order passed by the learned single the present appeal was filed. However, we find from the records that during the pendency of the appeal in this Court, the appellant carried out an exercise in order to comply with the directions as contained in para 25 of the impugned judgment. In terms thereof a speaking order has been passed by the appellant which was communicated vide letter dated 15.9.2004. A copy of the same is placed before us for our perusal. The said order refers to the directions issued by this Court on 30.4.2004 and it is stated further that for implementing the said judgment, the Corporation constituted a Committee of senior officers to go into the entire issue and to work out the additional requirement of the labour in the Gill Road Depot at Ludhiana after taking into account the off days available to the DPOS workers. Thus a committee was constituted by the appellant to look into the entire issue, and the said committee has submitted its report after making a study of the entire issue. It is stated in the said decision taken pursuant to the recommendations of the Committee that there is already surplus of 13000 DPS and 9000 departmental labour in the Corporation for which a VRS scheme has been offered and directions issued by the Government of India to resort to retrenchment of surplus labour depending upon the result of the VRS.

10. At this stage counsel appearing for the respondent states that the aforesaid figure which is given is the surplus labour position in the entire country whereas according to her the seniority list should be maintained depot-wise. In that connection she has referred to the contents in the

memorandum of appeal filed by the appellant wherein it is stated that the seniority list of workers selected after identification and physical fitness may be prepared for each depot/centre separately of handling labour and ancillary labourers on the basis of actual number of days work done by each labour during the last three years in the concerned depot/centre with contractors. Counsel for the appellant, however, points out and submits that subsequent to the aforesaid position which prevailed during the year 1997, a transfer policy has been brought into effect by the respondent some time in 1998 whereby surplus labours could be transferred from one depot to the other depot and from one district to the other district. We do not find on going through the records of the writ petition that the aforesaid transfer policy was under challenge.

11. In that view of the matter, we cannot express any opinion with regard to the aforesaid policy brought in by the respondent in the year 1998. Be that as it may, in our considered opinion, the directions which were issued by the learned single Judge in para 26 having been carried out and complied with by the appellant and they having passed an order which is communicated under letter dated 15.9.2004, nothing survives in this appeal. We are of the considered opinion that if the respondent is in any manner aggrieved by the aforesaid decision taken in terms of the recommendations of the Committee, it shall be open to the respondent to challenge the same in an appropriate forum. However, equity and fairness demands that the names of the respondents herein should be included in the list of surplus labourers and as and when there is vacancy and work, they should be employed first before any outsider is engaged.”

7. Having regard to the aforesaid observations, it cannot be said that the respondent has committed any contempt by employing labour which is already available with them in another depot. There is force in the submission made by counsel for the respondent that since there is no fresh employment, there would be no willful disobedience of the order dated 15.09.2005. In the absence of any material on record to show that the fresh labour has been employed, the present contempt petition cannot be entertained.

8. Accordingly, contempt petition along with the application are dismissed.

MARCH 12, 2013
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G.S.SISTANI, J