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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2349/2015 & C.M.No.4208/2015 (for stay)**

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Date of decision: 11th March, 2015

MUNNA LAL AND ORS. Petitioner
Through: Mr.Karunesh Tandon, Advocate

versus

CENTRAL PUBLIC WORKS DEPARTMENT Respondent
Through: Mr.Arun Bhardwaj, Advocate for
Respondent no.1.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

1. The writ petition and the stay application are dismissed vide separate order. I now proceed to record the reasons.
2. The contentions of the petitioners are that they have been working for Central Public Works Department (CPWD) although their wages were paid through contractor despite the fact that vide notification no.SO.707 dated 17.03.1993, the Government of India had prohibited the appointment of contract labour under the category of petitioners. The petitioners were also not paid the same wages and

the other statutory benefits as were being paid to the regular employees of CPWD, the respondent. The petitioner had raised the industrial dispute demanding the regularisation in the establishment of CPWD and the said dispute was referred for adjudication to Central Government Industrial Tribunal, Karkardooma (CGIT) and is pending for disposal. The petitioner learned that CPWD, the respondent is in the process of terminating their services and accordingly, they had moved an application under Section 33-A of Industrial Disputes Act (hereinafter referred to as 'the I.D.Act'), which prohibits the employer from changing the service conditions of its employees during the pendency of any conciliation proceedings or an industrial dispute. On these facts, following prayers have been made by the petitioners:

“a. Issue writ of mandamus against the respondents directing them not to alter condition (s) of service/dismiss/discharge/terminate the service of workers during the pendency of the proceedings/industrial dispute no.152/2004 titled as the Director General (works), CPWD vs. Sh.Radhey Shyam and 23 Others pending before the Central Government Industrial Tribunal cum Labour Court, Karkardooma, Delhi.

b. Issue writ of mandamus against the respondents directing them to pay the same wages as being paid to the permanent employees during the pendency of the proceedings/industrial dispute no.152/2004 pending

before the Central Government Industrial Tribunal cum Labour Court, Karkardooma, Delhi.

c. Pass any such other or further which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the light of the above averments and in the interest of justice."

3. I have heard learned counsels for the parties.

4. The present writ petition has been filed under Article 226 of the Constitution of India seeking a writ of mandamus. The jurisdiction of this court under Article 226 of the Constitution of India is wide and the court in appropriate cases can issue directions to a public body to perform an act which it is statutorily bound to perform. A writ of mandamus lies only when one person claiming a legal duty, to be done by other persons, sought the performance of the said legal duty. The order of mandamus is in the form of command directing to a person, corporation or an inferior tribunal requiring him or them to do a particular thing which is in the nature of its public duty. It is also well settled law that if any alternate remedy is available to the party, it is desired that the jurisdiction under Article 226 of the Constitution of India be not exercised.

5. In the present case, the workers have already raised an

industrial dispute whereby they had demanded the regularisation with CPWD, the respondent. The issue whether they were the employees of CPWD, the respondent or employees of the contractor is a matter which is sub-judice before the CGIT. The petitioners have contended that they have the apprehension that the CPWD will terminate them and this would amount to violation of the provisions of Section 33-A of the I.D.Act and so the respondent be prohibited from doing so.

6. It is apparent that the petitioner had already moved an application under Section 33-A of the I.D.Act it is before the CGIT for the same relief which is pending for disposal. Moreover, under Section 33-A of the I.D.Act it is “the employer” who is prohibited from changing the service conditions of its employees during the pendency of conciliation proceedings or the industrial dispute. Admittedly, the status of the respondent as “the employer” of the petitioners is a disputed fact, pending disposal before the CGIT. Moreover, the petitioners had already availed the remedy available to them by moving an application before the CGIT under Section 33-A of the I.D.Act. Moreover, the petitioners have invoked the jurisdiction of this court on the mere apprehension of termination of their

services. There is no order passed so far. Thus, there is no cause of action in favour of the petitioners.

7. The petitioners have also asked for the wages equivalent to the regular employees of the respondent. The issue regarding entitlement of the wages at par with the regular employees is an issue which can be determined only on the basis of the evidences and thus, the remedy does not lie in this court. Also under the I.D.Act an alternate remedy is available to the workers.

8. In view of the above discussion, it is apparent that the present writ petition is not maintainable. Thus, the writ petition and the stay application are hereby dismissed.

DEEPA SHARMA, J

MARCH 11, 2015/rb