

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

Date of Decision: April 21, 2017

+ **W.P.(C) 3428/2017**

DELHI MULTI STORY BUILDING EMPLOYEES CONGRESS

..... Petitioner

Through: Mr. M. Taiyab Khan and Mr. A.K.
Suri, Advocates

versus

**THE MANAGEMENT OF INSTITUTE OF HUMAN
BEHAVIOUR AND ALLIED SCIENCES & ANRRespondents**

Through: Mr. S.D. Singh and Mr. Rahul
Kumar Singh, Advocates for
respondent No.1

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
ORAL**

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C.M. 14975/2017 (Exemption)

Allowed subject to all just exceptions.

W.P.(C) 3428/2017 & C.M.14974/2017 (stay)

Petitioners are the outsourced persons/manpower provided by respondent No.2 to first respondent way back in the year 2008-09. Petitioners had sought Reference in May, 2015 to seek regularization of their service on the post of Attendants and had demanded wages at par with the regular employees of first respondent. The said Reference is pending at the pleading stage. First respondent had issued notice inviting Tender for providing manpower service on outsource basis in March,

2017. Apprehending their ouster pending the Reference, petitioners had filed an application under Section 33 of *the Industrial Disputes Act, 1947* to restrain first respondent from changing their service conditions by issuing fresh Tender for manpower (*Annexure P-10*). The said application stands rejected by the Tribunal vide impugned order of 29th March, 2017.

The Tribunal while relying upon this Court's decision in W.P.(C) 16649/2004 titled *Airport Authority of India v. Pyare Lal and Others* rendered on 17th November, 2006 has dismissed petitioners' application. Impugned order proceeds on the premise that if petitioners are permitted to work, then they would acquire a right and by way of interim relief, main relief cannot be granted.

Learned counsel for petitioners assails impugned order on the ground that petitioners are working with first respondent for last more than 8 years and they have rendered satisfactory service and if first respondent is permitted to have fresh manpower from another outsource, then it would have an effect of dislodging petitioners from service and would infact render the Reference infructuous. So, it is submitted that during the pendency of Reference, petitioners ought to be permitted to continue to work as petitioners will not be claiming to any right by virtue of the order passed herein because the said right would be determined on merits at the time of decision of the Reference.

The opposition to this petition by learned counsel for contesting respondent No.1 is on the ground that petitioners in collusion with respondent No.2 herein had filed an application under Section 33 of *the Industrial Disputes Act, 1947* to thwart the effort of first respondent to

have fresh manpower as petitioners are not rendering efficient service. Learned counsel for contesting respondent No.1 submits that there is no privity of contract between first respondent and petitioners, and even if it is taken that petitioners are likely to succeed in the Reference, still they would be entitled to the consequential relief of reinstatement and back-wages, etc. and so, for efficient functioning of first respondent, fresh manpower is needed. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned order, material on record and the decisions referred to in the impugned order, I find that the Tribunal has relied upon a decision of a co-ordinate Bench of this Court in *Batra Hospital Employees Union v. The Management of Batra Hospital and Medical Research Centre & Ors.*, 2011 SCC OnLine Del 1606 to reject petitioners' application. In *Batra Hospital (supra)*, the main relief was of regularization and the said relief was to be adjudicated upon after recording of evidence and in such a case, grant of interim protection against termination has been held to be tantamount to granting of main relief itself and the similar application was thus declined. I find no reason to take a different view than the one taken in *Batra Hospital (supra)*.

In view of aforesaid, I find rejection of petitioners' application is amply justified and as such, this petition and the application are dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 21, 2017

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