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

+ **W.P.(C) 8534/2016**

Date of decision: 21st February, 2017

**DELHI STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD (DSIIDC)**

..... Petitioner

Through Mr. Gaurang Kanth, Ms. Biji Rajesh,
Ms. Eshita Baruah, Advocates with Mr. Prabhat
Kumar, Divisional Manager, DSIIDC.

versus

VINEET GAUR & ORS

..... Respondent

Through Mr. Anshuman Sahni and Mr. Sukant
Vikram, Advocates for R-1, 2 & 4.
Mr. Abhishek Khanna, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Delhi State Industrial and Infrastructure Development Corporation Limited (DSIIDC) has filed this writ petition impugning order dated 18th May, 2016, passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) in OA No. 465/2015 limited to the directions issued in paragraphs 18 and 19. For the sake of convenience, we would reproduce paragraphs 18 and 19, which read as under:-

“18. However, it is to be seen that the applicants initiated the legal proceedings seeking regularization of

their services. The Hon'ble High Court noticing that the appointment of the applicants is irregular but not illegal, since they were possessing the requisite educational qualifications and were working against sanctioned posts, directed the respondents to conduct the induction test limited to the contract Junior Engineers and such contract Junior Engineers, who cleared the selection process, be inducted permanently against the posts they are currently holding. It is to be seen that the Hon'ble High Court, while passing the said orders, has not observed that if any of the petitioners failed to clear the selection process, their services, even as contractual Junior Engineers, should be terminated, and the respondents cannot utilise the services of the applicants even on contract basis against the available existing vacancies, even before the respondents fill up all the existing vacancies by way of regular recruitment, as per rules. It is also not the case of the respondents that there are no existing sanctioned vacancies and that there is no work or necessity to engage the applicants on contract basis even.

19. In the circumstances and for the aforesaid reasons, the OA is partly allowed. The impugned Annexure A (Colly.) termination orders dated 08.12.2014 are quashed and the respondents are directed to re-engage the applicants in service within 60 days on the same terms and conditions as they were working prior to the termination orders, till all the existing Junior Engineer (Civil) vacancies are filled up on regular basis. However, the applicants are not entitled for any arrears or benefits for the break period. The respondents are further directed to permit the applicants to participate in the selection process, along with others, if taken up by the respondents to fill up the vacancies on regular basis, by granting appropriate age relaxation, if required. No costs. ”

2. It is seen that the claim of the respondents, who were engaged for the first time as Work Assistants/Technical Supervisors between 7th May, 1995 to 1st May, 1998, for regularisation was rejected. The limited relief granted to the respondents, noticing that the respondents had the requisite educational qualifications and were working against sanctioned posts, was that they would be re-engaged in service within 60 days on the same terms and conditions on which they were working prior to the termination order dated 18th December, 2014, till the existing vacancies of Junior Engineer (Civil) were filled up on regular basis. The respondents were not to be paid any arrears or given benefit of the break period.

3. The DSIIDC questioning the directions in paragraphs 18 and 19 quoted above had made conflicting and contradictory assertions in the writ petition on facts. A Division Bench, recording the said discrepancy, vide order dated 28th September, 2016 had directed the petitioner DSIIDC to reconcile and state the true factual position. This order dated 28th September, 2016 reads:-

“1. The learned counsel for the petitioner prays for time to obtain instructions.

2. The case of the petitioner appears to be slightly contradictory. It is submitted that there is no requirement of Junior Engineers and, therefore, it is not necessary for the petitioner Corporation to fill up all vacant posts. At

the same time, in ground (M) (page-21), it is averred that it has been decided to fill up all posts on deputation basis. Inference being that the petitioner Corporation requires Junior Engineers.

3. Relist on 20th October, 2016.”

4. The petitioner-DSI IDC thereafter filed an affidavit stating that they would not fill up the posts of Junior Engineer on deputation and the said posts, if required, would be filled up as per the Recruitment Rules. On 20th October, 2016, counsel for the petitioner had stated at the Bar that the DSI IDC did not require and should not be compelled to utilize the services of the respondents. Further, the petitioner-DSI IDC did not, at that stage, want to fill up the vacant posts of Junior Engineer by regular recruitment. This is clearly recorded in the order dated 20th October, 2016, which reads as under:-

“Affidavit has been filed stating that the petitioner would not fill up the posts of Junior Engineer on deputation and the said posts would be filled up, if required, as per the Recruitment Rules. Counsel for the petitioner states that the petitioner Corporation does not require and cannot be compelled to take the services of the respondents. At this stage, they do not want to fill up the vacant posts of Junior Engineer by regular recruitment.

Issue notice returnable on 17th January, 2017.

Operation of the impugned order is stayed till the next date of hearing.”

5. The respondents the erstwhile contractual employees thereafter filed C.M. No.44581/2016 asserting that false and misleading affidavit and statement were made and the petitioner-DSIIDC has engaged services of Junior Engineer (Civil) through placement agencies. To substantiate the allegation, copy of supporting documents were placed on record. Accordingly, we had passed the following order on 17th January, 2017:-

“Issue fresh notice for service of respondent No.3, returnable on 2nd March, 2017.

On the said date, the writ petition will be listed before the Registrar concerned for completion of service.

At this stage, learned counsel for the respondent Nos.1, 2 and 4 submits that a wrong affidavit has been filed in the court and the petitioners in fact have been engaging Junior Engineer (Civil) through placement agencies. He has produced before us copy of orders dated 28th November, 2016 and 29th December, 2016 signed by Mr. Prabhat Kumar, Divisional Manager (P) and some other documents.

Mr. Prabhat Kumar, Divisional Manager (P) had filed an affidavit in this Court stating that no recruitment shall be done by the petitioner Corporation contrary to the Recruitment Rules and the petitioner Corporation shall not make any recruitment to the post of Junior Engineer through deputation including contractual employment. This affidavit was filed on 17th October, 2016.

Mr. Prabhat Kumar, Divisional Manager (P) will be present in the Court on the next date of hearing.

Relist before the Court on 21st February, 2017.”

6. Mr. Prabhat Kumar, Divisional Manager has now filed an affidavit in which he has stated and accepted the following position:-

“(x) That on 10.03.2016, the GNCTD had allotted the work of development of all unauthorized colonies in Delhi to the Petitioner Corporation. After the same, on 29.03.2016, the GNCTD issued a notification clarifying that in case the Petitioner Corporation requires more man-power to execute the work, they can hire the employees through Intelligent Communication Systems India Ltd. (ICSIL).

(xi) That hence, in order to fulfil the specified work assigned by GNCTD, the Petitioner Corporation hired the man-power services through ICSIL. The man-power so hired through ICSIL was for the specific project works which is assigned to the Petitioner Corporation. These employees are not directly engaged by the Petitioner Corporation and are not working against the regular vacancies of the Petitioner Corporation. They are engaged by ICSIL for the specified work and are employees of the ICSIL. The payment/salary of these employees are not paid directly by Petitioner Corporation. As and when their requirements of their work are completed or their work is not satisfactory, they are surrendered back to ICSIL.

(xii) That in the present Petition, the Respondents were directly engaged by the Petitioner Corporation and are on the rolls of the Petitioner Corporation. Hence, when the matter came up for consideration before this Hon’ble Court on 28.09.2016, it was pointed out that there is no requirement of JEs and it is not necessary for Petitioner Corporation to fill up all vacancies. However,

this Hon'ble Court noticed that in Ground M of the Writ Petition it was stated by the Petitioner Corporation that the Corporation has decided to fill up all posts on deputation basis. Hence, in these circumstances, this Hon'ble Court directed the Counsel for the Petitioner Corporation to seek instructions as to whether they wanted to fill up the regular vacancies or not.

(xiii) That in view of the above, the Deponent on behalf of the Petitioner Corporation filed an Affidavit on 17.10.2016 stating, inter alia, as follows:

“That in view of the above, the Petitioner hereby most humbly submits that no recruitment shall be done by the Petitioner Corporation contrary to the Recruitment Rules. The petitioner further submits that the Corporation shall not make any recruitment to the post of Junior Engineer through deputation including contractual employment on the rolls of the Petitioner Corporation.”

(xiv) That since the issue involved in the present matter was regarding the filling up of vacant posts of Junior Engineer in the Petitioner Corporation, the Petitioner Corporation through the Deponent stated categorically that they shall not make any recruitment contrary to the RRs. The statement of the Petitioner Corporation was only qua the filling up of regular vacancies which is lying vacant.

(xv) That however, the documents produced by the Respondent on 17.01.2017 cannot be treated as appointment letters for filling up of vacancies in the Petitioner Corporation.”

6. That at this stage, it is submitted that the Petitioner Corporation is still maintaining the stand that it shall not make any recruitment contrary to RRs for filling up the

vacant posts in the Petitioner Corporation. However, in order to fulfil the additional work allotted to the Petitioner Corporation by the GNCTD, the Petitioner Corporation availed the services of the ICSIL.”

7. Counsel for the petitioner-DSI IDC states that statement and assertions made earlier were on account of misunderstanding and the petitioner-DSI IDC did not have intent and purpose to conceal or withhold any fact. However, we would observe that full and truthful details were withheld and not averred on oath. We have reservations and disapprove the said lapse and default as it was the duty and responsibility of the petitioner-DSI IDC to candidly affirm and state the complete and full facts including engagement of Junior Engineers through Intelligent Communication Systems India Ltd. (ICSIL), which is a public sector undertaking. Nothing should be withheld and concealed and relevant and complete details should have been informed and stated on oath.

8. A reading of paragraph (x) of the affidavit of Mr. Prabhat Kumar would indicate that the DSI IDC has been given the work of development of all unauthorized colonies in Delhi and vide notification dated 29th March, 2016, the Government of NCT of Delhi has authorised the petitioner-DSI IDC to engage more manpower to execute the work. This engagement would be contractual through ICSIL. More manpower, would obviously

require additional and new hands. This is the reason why the petitioner-DSIIDC has engaged services of ICSIL for engagement of contractual workers.

9. This being the position, we do not think that we are required to interfere with the directions given in paragraphs 18 and 19 of the impugned order passed by the Tribunal. The respondents would be engaged in terms of the order passed by the Tribunal and would be paid back wages also from the date specified by the Tribunal. The writ petition is accordingly dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 21, 2017
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