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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6829/2017, CM No. 28447/2017**
SHAMSHER SINGH

..... Petitioner

Through: Ms. Rashmi Chopra, Adv. with Ms.
Ariya, Adv.

versus

DELHI TECHNOLOGY UNIVERSITY AND ANR

..... Respondent

Through: Mrs. Avnish Ahlawat, Adv. for R-
1/DTU
Mr. Rahul Sharma, Adv. with Mr.
C.K. Bhatt, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **09.08.2017**

CM No. 28447/2017 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 6829/2017

1. The present petition has been filed with the following prayers:-

*“In view of the submissions made herein, it is therefore
prayed:-*

*(a) issue a Writ of Certiorari or any other appropriate Writ
for direction to the Respondent University to consider and*

employ the Petitioner on the post of driver forthwith;

(b) issue a Writ of Certiorari or any other appropriate;

(c) grant all consequential benefit to the Petitioner which they are entitled in law and pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case.”

2. It is the case of the petitioner, that he was engaged as Driver in the erstwhile Delhi College of Engineering between the years 2001 and 2009. On August 13, 2009, he was again engaged as a driver in the respondent No.1 Institute. On November 23, 2010, an advertisement was issued for employment of Drivers on contract basis. Petitioner and two others were appointed on contract basis to carry out the duties of Driver related to the respondent no.1 on January 05, 2011.

3. It is a matter of record, the petitioner's contract was extended from time to time. It is his case, on March 31, 2016 he received a letter not extending the period of contract beyond March 31, 2016. The said letter became a subject matter of a Writ Petition being W.P.(C) No. 3126/2016, which was disposed of on December 07, 2016, on a statement made by the counsel for the petitioner, on instructions, that he is not pressing the petition.

4. It is the case of the petitioner that he approached the respondents for engagement as Driver on contractual basis but his request was kept pending

on the ground that he will be recruited shortly. As the petitioner came to know that the respondents are employing Drivers on short term contract basis through outside agency and there are vacant posts of Driver in the respondent No.1, the present petition has been filed.

5. Ms. Rashmi Chopra has drawn my attention to documents at pages 72 to 75 to show that the engagement of Drivers through an outside agency, which according to her is illegal, only to circumvent the process of regular appointments under the Rules and it is required for the Court to lift the veil to understand the real intent and purpose of outsourcing. She states, even if the petitioner approaches the outside agency, it is highly unlikely, the petitioner would be engaged.

6. Suffice to state, it is not the case of the petitioner that contractual appointments are being made by the respondent No.1 itself without considering the case of the petitioner. If the grievance of the petitioner is, engagement of Drivers through an outside agency, the remedy for the petitioner would lie in challenging the same on the ground the same is sham and camouflage, that too before an Industrial Adjudicator in terms of the judgment of the Supreme Court in the case reported as *(2001) 7 SCC 1 Steel Authority of India and Ors. vs. National Union Waterfront Workers and*

Ors wherein the Supreme Court in paras 125(5) and 126 held as under:-

“XXXX

XXXX

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125(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

126. We have used the expression industrial adjudicator by design as determination of the questions afore-mentioned requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be

industrial tribunal/court whose determination will be amenable to judicial review.”

Till such time, such a declaration is given, no relief can be given.

That apart, the learned counsel for the petitioner has not shown any document which prohibits, engagement of Drivers through an outside agency.

7. Insofar as the judgment of the Division Bench relied upon by the learned counsel for the petitioner is concerned, the same arises from a judgment passed by the Central Administrative Tribunal, Principal Bench dated May 18, 2016 in OA No. 465/2015 wherein the Tribunal has in paras 18 and 19 held 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. ”

8. This Court had noted the facts in para 2 of its judgment from where it is noted that the respondents before this Court were engaged as Work Assistants/Technical Supervisors between May 07, 1995 to May 01, 1998

and their claim for regularisation was rejected. The limited relief granted to them 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, till the existing vacancies of Junior Engineer were filled up on regular basis. This direction was given by the Tribunal, on a finding that in a litigation before this Court, this Court while passing orders has not observed that if any of the petitioners (respondents before the High Court) 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 available vacancies, till regular recruitment is made. It may be stated here that the respondents were not engaged despite orders. This Court had found that the petitioner Corporation had sufficient work, which they intend to execute through an intermediary ICSIL, which aspect was concealed by the petitioner Corporation. This Court was of the view that the directions given by the Tribunal in paras 18 and 19 should not be interfered with. Whereas, in the case in hand, the earlier writ petition filed by the petitioner was disposed of, as not pressed on December 07, 2016. There are no directions in favour of the petitioner akin to the one given by the Tribunal in favour of the

respondents before this Court for their re-engagement. The reliance now placed by the learned counsel for the petitioner on the documents at pages 72 to 75 in support of her contention were in existence when the writ petition was withdrawn. The additional facts/feature being the petitioner has filed applications under the RTI Act, which aspect would not give any fresh cause of action to the petitioner.

9. The earlier writ petition having been withdrawn and the remedy for the petitioner is to raise an industrial dispute, if aggrieved by the engagement of the Drivers through an outside agency, I do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

AUGUST 09, 2017/ak