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

Date of Decision:- 26.11.2019

+ **W.P.(C) 10137/2019 & C.M.No.41876/2019**

ALL INDIA GENERAL KAMGAR UNION Petitioner

Through: Mr. Gunjan Singh and Mr. Arun Kasi,
Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY (JNU) AND ANR.

..... Respondents

Through: Ms. Ginny J. Rautray, Mr. Navdeep
Singh and Mr. Parth Shekhar, Advs. for R1.

Mr. Harneet Kaur, Adv. for R2.

Mr. Kirtiman Singh, CGSC with Mr. Waize Ali
Noor and Mr. Rohan Anand, Advs. for R3/UOI.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the All India General Kamgar Union seeks a direction to the respondent Nos.1 and 2 not to terminate the services of 500 Security Guards, who claim to be working in the premises of the respondent No.1-University, on the ground that they are employees of the respondent no.1, and not of the respondent no.2 contractor as the contract between the respondent nos.1 and 2 was a sham and camouflage.
2. As the petition did not furnish details of the 500 workmen whose interest it claims to espouse, the petitioner was granted time to file a list of these workmen along with their details.
3. Pursuant thereto, the petitioner filed a list of 11 workmen, who are claiming to have been discharging duties in the post of 'Security

Guard' within the premises of respondent no.1 for the last 10 years, starting from dates ranging between November, 2010 to July, 2013.

4. On 20.09.2019 even though the respondents had vehemently opposed the maintainability of the writ petition, learned counsel for the respondent no.2 had categorically submitted that it was willing to re-engage these workmen on available sites in the NCR and pay them the applicable wages. On that day this Court had, in view of the petitioner's submissions that the workmen apprehended being removed from service without any notice, directed the respondent no.1 to maintain status quo with respect to the services of the 11 Security Guards, which interim order has continued till date.

5. On 16.10.2019, the respondent no.1 had informed this Court that out of the 11 workmen who had been granted protection, only 10 had reported for duty and were being paid their due wages. When the matter was subsequently taken up for hearing on 06.11.2019, the learned counsel for the petitioner had submitted that these 10 workmen were willing to raise an industrial dispute before the Labour Court but had prayed for grant of interim protection to the workmen till the final adjudication of the industrial dispute proposed to be raised by them, so that they are not rendered without any source of income during the pendency of their claim before the Labour Court. For this purpose, the petitioner had placed reliance on the decisions of this Court in WP (C) No.4642/2014 titled '**Ram Chander and Ors. Vs. Union of India & Ors.**' and WP (C) No. 2203/2019 titled '**Vishant Kumar Kholiya & Ors. Vs. South Delhi Municipal Corporation & Anr.**'

6. Thereafter this Court, in view of the petitioner's stand that the workman were intending to raise an industrial dispute and the oral request for impleadment made by the parties had impleaded the Union of India through Ministry of Labour and Employment, New Delhi as respondent no.3. Mr. Kirtiman Singh, learned standing counsel for the newly impleaded respondent no.3 was directed to get instructions as to the time frame within which a reference could be made by respondent no.3 in case a dispute is raised by the workmen. Today, Mr. Singh submits that the respondent no.3 would positively make a reference within a period of two months from the date of receiving the reply filed by the respondent no.1, to the workmen's claim petition.

7. Today, learned counsel for the petitioner once again prays for maintenance of status quo with respect to the services of the workmen till the time the industrial dispute is decided. On the other hand, learned counsel for the respondent no.1 opposes this prayer in view of the undertaking given by the respondent no.2 assuring a job to these workmen, in the interregnum. She further submits that even otherwise, these workmen can no longer be engaged at the premises of the respondent no.1 in light of the fact that in terms of its new contract with M/s Cyclops Security and Allied Services Private Limited, only ex-servicemen are being engaged as Security Guards in its premises. This assertion is, however, vehemently disputed by learned counsel for the petitioner, who submits that even today a number of security personnel working at the premises of the respondent no.1 are not ex-servicemen.

8. Having considered the submissions of the parties, I am of the

view that in the light of the specific undertaking given by the respondent no.2 that these 10 workmen will be assigned work in the NCR in case they report for duty within 10 days for which they would be paid applicable wages, it cannot be said that if interim protection is not granted, the workman would be rendered without any source of income during the pendency of the industrial dispute. I have also considered the decisions in ***Ram Chander and Ors. Vs. Union of India*** (*supra*) and ***Vishant Kumar Kholiya & Ors.*** (*supra*) relied upon by the petitioner and find that the same are wholly inapplicable to the facts of the present case. In the cases referred to by the petitioner, non grant of interim relief to the workmen would have rendered them jobless, whereas in the present case once the respondent no.2 has given an assurance to engage the workmen, no case is made out for granting interim protection to the petitioner-workman for the entire period during which their dispute remains pending before the Labour Court.

9. Even though no case is made out for granting interim protection to the workmen during the entire pendency of their dispute before the Court, in the interest of justice, the interim protection already granted to them vide order dated 20.09.2019 shall continue for a further period of two months from the date of reference. This protection is being granted to enable the workmen to make alternate arrangements, as their primary grievance before this Court has been that in case they are deployed elsewhere by the respondent no.2, their families including their school going children, who are presently residing in the vicinity of the respondent no.1's premises, will be adversely

effected. It is, however, made clear that in case the workmen rejoin the services of respondent no.2, in terms of the offer made by the respondent no.2 before this Court, the same will not in any manner be construed as a relinquishment of their claim that the contract between the respondent nos.1 and 2 was a sham and a camouflage and they were, in fact, employees of the respondent no.1. It is also made clear that it will be open for the Labour Court to examine all the pleas of the workmen on its own merits.

10. However, since the workmen are stated to have already filed their claim petition today, the respondent nos.1 and 2 are directed to file their respective responses to the said claim petition within a period of two weeks. The time granted to the respondents is being curtailed in view of their stand in these proceedings which indicates that there is no possibility of any conciliation between the parties. The respondent no.3 is further directed to make the appropriate reference within a period of four weeks, on receiving the replies of the respondents nos.1 and 2.

11. Needless to say, in case any of the workmen are found guilty of any kind of misconduct, the respondent no.2 will be entitled to take action against them, as per law.

12. The writ petition, along with pending application, is disposed of in the aforesaid terms.

REKHA PALLI, J.

NOVEMBER 26, 2019/‘SDP’