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

Date of Decision :- 19.09.2019

\+ W.P.(C) 7412/2019
\+ W.P.(C) 7431/2019
\+ W.P.(C) 7437/2019
\+ W.P.(C) 7446/2019
\+ W.P.(C) 7522/2019
\+ W.P.(C) 8010/2019
\+ W.P.(C) 8011/2019
\+ W.P.(C) 8012/2019
\+ W.P.(C) 8013/2019
\+ W.P.(C) 8014/2019
\+ W.P.(C) 8016/2019
\+ W.P.(C) 8034/2019
\+ W.P.(C) 8038/2019
\+ W.P.(C) 8047/2019
\+ W.P.(C) 8337/2019
\+ W.P.(C) 8391/2019
\+ W.P.(C) 8395/2019
\+ W.P.(C) 8397/2019
\+ W.P.(C) 8399/2019
\+ W.P.(C) 8409/2019
\+ W.P.(C) 8417/2019
\+ W.P.(C) 8418/2019
\+ W.P.(C) 8422/2019
\+ W.P.(C) 8423/2019

RAVI KUMAR ..... Petitioner
BHAGWATI ..... Petitioner
SH. MANOJ PRASAD .....Petitioner
SH. MANISH KUMAR ..... Petitioner
ARUN KUMAR .....Petitioner
SH. RAHUL KUMAR ....Petitioner

SONIA .....Petitioner
AKASH .....Petitioner
SH. ABDUL SALAM .....Petitioner
SH. WAHID .....Petitioner
SANNI .....Petitioner
SEEMA .....Petitioner
PRADEEP ..... Petitioner
SMT. ANISHA ..... Petitioner
YOGENDER SINGH .....Petitioner
AARTI ..... Petitioner
LAXMI DEVI .....Petitioner
MEENA KUMARI ....Petitioner
SMT. ASHA .....Petitioner
SUSHMA .....Petitioner
RAM AVTAR .....Petitioner
DHARMENDRA KUMAR .....Petitioner
SH. GOPAL .....Petitioner
VIRENDER KUMAR .....Petitioner

Through: Ms. Ritu Jain and Mr. M.N. Singh, Advs.

Versus

LOK NAYAK HOSPITAL THROUGH MEDICAL SUPERINTENDENT ..... Respondent

Through: Mr. Pankaj Yadav, Mr. Priyaranjan Dubey and Mr. Vijay Chandra Jha, Advs. in items No.3, 4 and 6.

Mr. R.K. Agnihotri, Adv. for R1 in item No.5 & 7.

Mr. Mananjay Mishra, Adv. for R1 in items No.9, 11 and 12.

Mr. Chirag, Ms. Ravleen Sabharwal, Mr. G. Sai Krishna Kumar and Mr. Vipul Sharma, Advs. in items No.10.

Mr. Chirag, Ms. Ravleen Sabharwal, Mr. G. Sai Krishna Kumar and Mr. Vipul Sharma, Advs. in items No.13 & 14.
Mr. Jamal Akhtar, Adv. in items No.17,21 & 26.
Mr. Mohd. Irshad, Adv. in items No.18,20 & 25.
Mr. Kaustubh Aushunap, Advocate in item No.19, 23 and 24.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present batch of writ petitions assail separate but identical Awards passed by the learned Labour Court whereunder the petitioners' claims for reinstatement were rejected on the ground that they had not been able to prove that they were employees of the respondent hospital.

2. The respondent Hospital had, from time to time, engaged the petitioners to the post of Safai Karamchari on a daily wage basis through different contractors, though for some short periods the petitioners were also paid their wages directly by the respondent. The petitioners, who were working in this capacity for the last many years, were aggrieved when the contractor presently engaged by the respondent/Hospital, namely, M/s. Sulabh International, on 20.09.2017 refused to permit them to continue serving at the hospital. Consequently, the petitioners raised a common industrial dispute alleging *inter alia* that the respondent, despite needing their services on a regular basis, had been deliberately engaging them through different contractors. They claimed that the respondent was resorting

to such a practice of engaging the petitioners through a contractor solely with the intent to deprive them of their statutory dues, including ESI and provident fund contributions.

3. The claim of the petitioners was vehemently opposed by the respondent in its reply before the Labour Court. The respondent contended that the petitioners were employees of the contractor and the respondent had no relationship whatsoever with them.

4. On 14.05.2018, based on the pleadings of the parties, the Labour Court framed an issue as to whether there was any employer-employee relationship between the petitioners and the respondent hospital. This issue, as already noted, came to be decided against the petitioners. The Labour Court, while rejecting their claims, held that the petitioners were employees of M/s Sulabh International and that merely because they had received wages directly from the respondent hospital for the period of their engagement between 22.08.2017 to 19.09.2017, the same could not imply that they were employees of the respondent.

4. Impugning these Awards, learned counsel for the petitioners submits that the petitioners had contended before the Labour Court that notwithstanding their continuous engagement at the respondent hospital, their wages were being paid through the contractor engaged by the respondent themselves. She submits that the petitioners had specifically pleaded before the Court that they had been working in the respondent/hospital from a date much prior to the engagement of the present contractor M/s Sulabh International and that, therefore, they could not be replaced by another set of contractual workmen. It

is contended by her that the action of the respondent in substituting one set of contractual employees with another set of contractual employees is contrary to the settled legal position, for which purpose she placed reliance on the decision of the Supreme Court in ***State of Haryana and Ors. Vs. Piara Singh and Ors.*** *(1992) 4 SCC 118* and of this Court in ***Hemant Kumar & Ors. Vs. Employees State Insurance Corporation and Ors.*** *W.P.(C) 6891/2019* and ***Anil Lamba and Ors Vs. Govt. of NCT and Ors.*** [*238 (2017) DLT 760]*. She submits that the Labour Court had failed to consider these vital issues raised by the petitioners and therefore contends that the impugned Awards are liable to be set aside.

5. On the other hand, learned counsel for the respondent, while supporting the impugned Awards, submits that there was nothing to show that the petitioners were ever employed by the respondent and contends that the Labour Court was justified in rejecting the petitioners' claims against the respondent. He, therefore, prays that the writ petitions be dismissed.

6. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

7. A plain reading of the impugned Awards, each of which runs into 57 pages, shows that the Labour Court has merely relied on the fact that the petitioners were drawing their salary from the contractor while serving in the respondent hospital to hold that they were employees of the contractor and not that of the hospital. The Labour Court has not at all considered the petitioners' submissions that their initial appointment to the respondent/hospital was much prior to the

date of engagement of the present contractor. Even their contention that their engagement at the respondent/hospital through contractors, when these contractors would change from time to time while the petitioners continued working at the hospital amounts to unfair labour practice has been ignored by the Labour Court. Their plea that the respondent was malafidely calling the petitioners employees of the contractor, as the contract between the contractor and respondent was merely a ploy to deprive the petitioners of the statutory benefits that may otherwise have accrued to them, seems to not have been dealt with. I also find that even one of the primary contentions of the petitioners, premised on the settled legal position, that they being contractual workmen could not be replaced by another set of contractual workmen, has not been considered by the Labour Court. The petitioners' claims have been rejected merely on the ground that the respondent was strictly abiding by the terms of its contract with the respective contractors. The Tribunal ought to have considered other relevant factors which were specifically pleaded by the petitioners, and not merely relied on the source of the petitioner's wages while deciding the existence of employer-employee relationship between them. In my view, it was incumbent on the Labour Court to deal with all the issues raised by the parties and this approach of the Labour Court, to decide the dispute by dealing with only one of the contentions raised by the petitioners, contravenes the real purpose of this special mechanism provided under the Industrial Disputes Act, 1947.

8. In these circumstances, the impugned Awards cannot be sustained and are accordingly set aside. The matters are remanded back to the Labour Court for fresh adjudication by dealing with all the issues raised by the petitioners. Keeping in view the fact that the petitioners are out of service, the Labour Court is requested to decide the reference expeditiously and preferably within a period of four months.

9. It is made clear that this Court has not expressed any opinion on the merits of the contentions raised by the petitioners. It will be open for the Labour Court to deal with these claims on their own merits and while doing so, also consider the effect of the decisions relied upon by the petitioners.

10. The parties will appear before the Labour Court on 04.11.2019 for further proceedings.

11. The writ petitions are disposed of in the aforesaid terms.

REKHA PALLI, J

SEPTEMBER 19, 2019
'SDP'