

\$~7 to 11

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

% ***Date of Judgment : 06th February, 2020***

- + W.P.(C) 842/2020, CM APPL. 2649/2020 & 4825/2020
SUSHIL KUMAR AND ORS. Petitioners
versus
GOVT. OF NCT OF DELHI AND ORS. Respondents
- + W.P.(C) 876/2020
NARESH KUMAR & ORS. Petitioners
versus
GOVT. OF NCT OF DELHI & ORS. Respondents
- + W.P.(C) 877/2020
RENU CHAUHAN & ORS. Petitioners
versus
GOVT. OF NCT OF DELHI & ORS. Respondents
- + W.P.(C) 878/2020
MAMTA & ORS. Petitioners
versus
GOVT. OF NCT OF DELHI & ORS. Respondents
- + W.P.(C) 883/2020
SANTU MONDAL & ORS. Petitioners
versus
GOVT. OF NCT OF DELHI & ORS. Respondents

Present: Mr.Shanker Raju and Mr.Nilansh Gaur, Advocates for the
petitioners in item no.7.
Mr.M.K.Bhardwaj, counsel for the petitioners in items no.8 to 11.
Mrs.Avnish Ahlawat, Standing Counsel, GNCTD (services) with
Mr.N.K.Singh, Adv. for the respondents in all items.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

C.M.4825/2020 (impleadment) in W.P.(C) 842/2020

1. The present application has been filed by the applicants seeking their impleadment as co-petitioners in the present writ petition.

2. The prayer made in the application is allowed. The applicants are impleaded as co-petitioners in W.P.(C) 842/2020. The Amended Memo of Parties be taken on record.
3. The application stands disposed of.

W.P.(C) 842/2020, W.P.(C) 876/2020, W.P.(C) 877/2020, W.P.(C) 878/2020 & W.P.(C) 883/2020

4. With consent of the parties all five writ petitions are set down for final hearing and disposal by this common order at the admission stage itself.
5. The undisputed facts are that the petitioners were working in the dispensaries run by the Delhi Government as sweeper-cum-chowkidars and nursing orderlies etc. The petitioners were working under different contractors.
6. Subsequently, an office order dated 27.02.2017 was issued, which is heavily relied upon by learned counsel for the petitioners in support of their submissions, to the effect that all the petitioners who were earlier employed by a contractor would now become contractual employees under the Delhi Government; and the Delhi Government would accordingly be their employer.
7. Issues having arisen on account of the respondents asking the petitioners to register with agencies, which were then engaged by the respondents to provide services on an outsourced basis, the petitioners filed their respective OAs before the Central Administrative Tribunal ('Tribunal') in the year 2017. The reliefs sought in O.A.No. 4134/2017 filed by Ms.Renu Chauhan & Others, which are illustrative of the grievances in all OAs, are as under:

- “(i) To declare the action of respondents in changing the nature of appointment of applicants and forcing them to get registered with outside agency i.e. ICSIL as illegal and unjustified and direct the respondents to continue the applicants as Sweeper-cum-Chowkidar & Nursing Orderly in the same capacity in which they have been appointed till their regularization as per the regularization scheme to be formulated by Govt. of NCT of Delhi as per judgment of Hon'ble High Court in the case of Sonia Gandhi & Ors.
- (ii) To declare the action of respondents in replacing the applicants with another set of contractual employees and resorting to Contract Labour System for discharging the perennial nature of work attached to the post of Sweeper-cum-Chowkidar and Nursing Orderly as illegal and violative of Contract Labour (Regulation & Abolition) Act, 1970 and direct the respondents to continue the applicants as Sweeper-cum-Chowkidar and Nursing Orderly in the same capacity and give them same pay and allowances as paid to the regular Sweeper-cum-Chowkidar and Nursing Orderly on the principle of equal pay for equal work with all consequential benefits including arrears of pay.
- (iii) To quash and set aside Annexure A-1 and direct the respondents not to change the terms & conditions of appointment of applicants by forcing them to get registered with ICSIL for continuation of service as Sweeper-cum-Chowkidar and Nursing Orderly through ICSIL on contract basis.
- (iv) To pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- (v) To allow the OA with cost.”

8. The OAs having been dismissed by the Tribunal, has led to the filing of the present writ petitions.
9. Learned counsel for the petitioners have relied upon decision taken in the 5th Meeting of Delhi Advisory Contract Labour Board held on 18.07.2018 under the Chairmanship of the Hon'ble Minister of Labour. The deliberations and resolutions of Board as noted in the Minutes of Meeting dated 07.08.2018, which have been relied upon by the petitioners, read as under:

“(a) Govt. Departments should hire the personnel on direct contract basis instead of through outsourcing agencies to ensure payment of full minimum wages, PF etc. and compliance of all other labour entitlements. The existing personnel engaged through outsourcing agencies may be taken on direct contract and be paid full minimum wages, PF etc. by the deptt concerned through appointment of a labour welfare officer.
(b) Some recruitment agencies be identified for fulfilling future manpower needs, to be taken on contract basis.
(c) Labour Department will obtain information from all departments regarding contract workers engaged through various contractors/outsourcing agencies with details i.e. designation, category of skill and wages paid.
(d) Thereafter, Labour Department shall prepare a cabinet note on this issue for consideration of the cabinet.”

10. Learned counsel for the petitioners contend that based on the above resolutions, the workers must be deemed to have been engaged directly by the Delhi Government; and the Delhi Government ought to be responsible for preserving all the rights of the petitioners which would consequently flow in their favour.

11. Ms.Ahlawat, learned counsel appearing for the respondents however contends that Office Order dated 27.02.2017 was issued only as a one-time measure, pertaining to the workers and was not applicable to the petitioners. The said Office Order reads as under:

*“GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE GENERAL OF HEALTH SERVICES
7-17, KARKARDOOMA, DELHI – 110032
(CARE-TAKING BRANCH)*

Tel No.22304668 E-mail: etdhc.delhi@gmail.com

F.No.9/23/DGHS/HQ/2016-17/194896-194905 Dated: 27.02.2017

OFFICE ORDER

With due approval of the Competent Authority i.e. DGHS, Nursing Orderly and SCC worker under DGHS and DGHS HQ & Sanitation worker and Security guard at DGHS (HQ) have been engaged on daily wages w.e.f. 28.02.2017 for 89 days as per modalities mentioned under.

- 1. NO/SSC/Sanitation workers/Security guard have been engaged as per the railway wages of Rs. 374/ per day as per labour Department order F. No. 12 (142)/ 13/ mw/ Lab/3398 dated 31.03.2016 as per rules.*
- 2. The Payment to the worker will be made on monthly basis and through EGS by concerned CDMOs.*
- 3. Concerned CDMO will operationalize the work allocation and maintain the daily attendance record and will be responsible for monthly payment.*
- 4. Number of workers on daily wages (NQ/ SSCs) under concerned districts will be same as deployed earlier.*
- 5. Number of worker on daily wages (Sanitary workers/security guard), deployed at DGHS (HQ) will also be same as earlier.*

This issues with prior approval of Competent Authority

File No. 9/ 23/ DGHS/ HQ/ 2016-2017

SMO, CT DGHS (HQ) Dated

....”

12. She submits that the genesis of this Office Order is Cabinet Decision No. 2323 dated 22.03.2016, which we reproduce below:

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI
GENERAL ADMINISTRATION DEPARTMENT
(CO-ORDINATION BRANCH)
DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI
No.F.3/3/2016/GAD/CN/dsgadiii/1516-1526
Dated: 30-3-16
CABINET DECISION NO.2323 DATED 22.03.2016*

Subject: Payment to Contractual/Outsourced Workers in different Departments/organizations under GNCTD.

Decision: The Cabinet noted with concern the delay occurring every month in releasing wages to the workers engaged by the Govt. Departments/Organizations directly or outsourced from private firms/agencies. It was noticed that in several cases either the contractor/outsourced agency has not raised any bill or in some cases where the bill has been raised, payment has not been released by the departments or where payment has been released by the departments or where payments have been released, the workers have not been paid by the contractor. After deliberations, the following decisions were taken by the Cabinet:-

- (1) It shall be the personal responsibility of each HOD/Secretary to ensure that all contract employees, whether employed directly by GNCTD or working with a contractor whose services have been hired by GNCTD, are paid their wages for previous month latest by 15th of every month.*
- (2) Each HOD/Secretary shall certify that all employees have been paid wages. The certificate should reach Chief Secretary by 5 PM on 20th day of each month.*
- (3) The Chief Secretary shall submit a report by 11 AM on 22nd day of each month to the Chief Minister.*
- (4) Those HODs/Secretaries, who fail to ensure that payment has been made to all employees for the previous month, shall make themselves liable for imposition of penalty equal to deduction of pay upto 10% of their basic salary for that*

month. An officer shall be heard before such penalty is imposed.

- (5) In order to ensure that all employees get their salaries in time. HODs/Secretaries should use all powers at their disposal to ensure the same. If contractor fails to comply despite repeated attempts, HOD/Secretary shall be at liberty to cancel the contract.
- (6) (a) If the contract is cancelled, immediate steps as warranted should be taken in that case to invite fresh tenders/bids and a new contractor/firm finalized.
(b) For work already rendered by a worker(s), the Department may make payment of the due amount of wages to the worker(s) directly and adjust it against bills that would otherwise be due to the contractor.
(c) In the interim and till a new contractor is selected, the Department shall take all the concerned willing workers into its fold as daily wage workers. This be done for a maximum period of 89 days in one go and only by way of interim measure.
- (7) If the contract is cancelled, the said firm/company and all those firms/companies in which the partners/Directors of the said firm/company are partners/Directors, shall be blacklisted from getting any work in GNCTD for a period of 3 years. Any amount due to them, including security, shall be forfeited.
- (8) To ensure that there is no delay in processing bills, the departments do not need to send the periodic bills to Finance Department for approval. The bills should be settled at their end only.
- (9) (a) The Labour Department shall issue a comprehensive circular on the above mentioned subject.
(b) In addition, the Finance Department will take steps to empanel agencies which can supply workers to meet the requirements of different Departments. Department(s) shall be at liberty to engage requisite work force from such empanelled agencies.

Sd/-
(K.K.Sharma)
Secretary to the Cabinet”

13. Ms.Ahlawat contends that the Delhi Cabinet took note of the fact that there was delay every month in releasing wages to the workers engaged, either directly or through outsourced private agencies, for the reason that either the contractor did not raise any bill; or, where the bill was raised, payments were not released; or, where payments were released, workers had not been paid by the contractor. She submits that after a fresh tender was invited, a contractor was selected but on account of stay granted by the Tribunal, the contractor could not be finally appointed; and the workers therefore continued to work under the shelter of the stay order, which now stands vacated. She submits that the deliberations that took place at the meeting held on 18.07.2018, sought to be relied upon, are only advisory in nature, which is apparent from a reading of para 8 of the Minutes of Meeting dated 18.07.2018, more particularly para 8 (d) which is reproduced again hereinbelow; and furthermore the Cabinet has not given its assent thereto:

“8. After detailed deliberations, the Board resolved the following

(a) Govt. Departments should hire the personnel on direct contract basis instead of through outsourcing agencies to ensure payment of full minimum wages, PF etc. and compliance of all other labour entitlements. The existing personnel engaged through outsourcing agencies may be taken on direct contract and be paid full minimum wages, PF etc. by the deptt concerned through appointment of a labour welfare officer.

(b) Some recruitment agencies be identified for fulfilling future manpower needs, to be taken on contract basis.

(c) Labour Department will obtain information from all departments regarding contract workers engaged through

various contractors/outsourcing agencies with details i.e. designation, category of skill and wages paid.

(d) Thereafter, Labour Department shall prepare a cabinet note on this issue for consideration of the cabinet.”

14. We have heard learned counsel for the parties and have considered their contentions.
15. Upon perusal of Cabinet Decision dated 22.03.2016 referred to above it is evident that the Cabinet was concerned about the delay in the payment of wages to workers engaged by government departments and organizations, either directly or outsourced through private firms/agencies. It was in this context that the Cabinet decided to put in place certain measures to ensure that all contractual employees, whether employed directly by the Government or through a contractor whose services have been hired by the Government, are paid wages regularly and punctually. There is therefore nothing in the Cabinet Decision dated 22.03.2016 to warrant the conclusion that the Cabinet had decided that all contractual employees would be hired directly by the Government and there would be no outsourcing of contractual employees through private firms/agencies/contractors. Accordingly, there is no basis to say that after Cabinet Decision dated 22.03.2016, the petitioners must be deemed to have been engaged on contractual basis directly by the Delhi Government.
16. In so far as office order dated 27.02.2017 is concerned, we are inclined to agree with the submission made by Ms.Ahlawat, learned counsel appearing on behalf of the respondents that the office order was by way of a one-time measure, for engagement of certain persons on daily wage basis for a certain time of period; and that office order 27.02.2017 did

not give to the petitioner any right to seek engagement on the same basis.

17. We are also informed that in the meantime a tender had been issued by the respondents, consequent whereupon a contractor has been selected through whom the services of sweeper-cum-chowkidars and nursing orderlies etc. would be engaged by the Delhi government; but by reason of stay order issued by the Tribunal the contract with the selected contractor could not be finalized.
18. Accordingly, we find no merit in the petitioners' contention that they must be deemed to have become contractual employees of the respondents, which contention we hereby reject. However, we direct that the Delhi Government is bound to comply with the Cabinet Decision No.2323 dated 22.03.2016, which we have extracted above; and to ensure that all decisions contained in the Cabinet Decision dated 22.03.2016 shall be scrupulously and punctually enforced, in order to secure the rights of contractual employees, whether hired directly by the Government or engaged by outsourcing through private firms/agencies/ contractors.
19. Resultantly, the present writ petitions are disposed of in the above terms. The petitioners shall report to the respective contractors, as and when they are appointed.

C.M.2649/2020 (stay) in W.P.(C) 842/2020

C.M.2772/2020 (stay) in W.P.(C) 876/2020

C.M.2774/2020 (stay) in W.P.(C) 877/2020

C.M.2776/2020 (stay) in W.P.(C) 878/2020

C.M.2799/2020 (stay) in W.P.(C) 883/2020

20. The applications stand disposed of in view of the order passed in the writ petitions.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 06, 2020

rb

