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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th August, 2021

+ **W.P.(C) 5815/2021 & CM APPL. 18215/2021**
DIRECTOR GENERAL OF WORKS CPWD & ANR. Petitioners
Through: Mr. Bharathi Raju, CGSC for
Petitioner Nos. 1 and 2 (M:
9868895906).

versus
RAMRAJ SINGH & ORS. Respondents
Through: Mr. Anuj Aggarwal & Mr. Shubham
Pundhir, Advocates (M-9891403206).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 14th December, 2018 passed by the Presiding Officer, CGIT cum Labour Courts-II, Dwarka District Courts, in **ID No. 03/2004**. As per the impugned order, the CGIT has directed reinstatement of three workmen with immediate effect, along with back wages and other directions, which is extracted below:

“ In the instant case admittedly no permission or approval was sought by the employer in terms of section 33(2) (b). Thus, the contention of the Ld. A/R that by not filing a separate petition the prayer cannot be entertained since, not acceptable. Moreover the Ld. A/R for the management has not denied the fact of alleged termination as no objection has been filed. It is thus, held that the employer during the pendency of this dispute has acted in a manner in contravention of the provision

of section 33(2)(b) and the said action is illegal and unjustified and need to be corrected by restoring the status quo of the service condition of the workman at the time of filing of this proceeding.

The petition u/s 33 by the workmen is thus, allowed. The management is directed to reinstate the workmen Ramraj Singh, Rajkumar and Bhupender Singh to service with immediate effect alongwith the back wages from 1st Feb, 2018 till they are reinstated to service. The parties are at liberty of moving the appropriate authority for taken legal action against the management in terms of section 31 of the ID Act.”

3. Vide order dated 3rd June 2021, this court had directed Ms. Bharathi Raju, Id. Counsel for the Petitioner to place a better affidavit as to why there was such a long delay in challenging the impugned order. The same has been filed and is on record.
4. This Court has perused the said affidavit placed on record by the Director General of Works, CPWD. As per the said affidavit, there was a major restructuring exercise which were undertaken in the CPWD, which led to various buildings/offices being shut down across the country, and thereafter reopened. Accordingly, it appears that there is sufficient ground to explain the delay in challenging the impugned award.
5. On merits, the submission of Ms. Raju, Id. counsel for the Petitioner, is that in order for Section 33 of the Industrial Disputes Act, 1947, to be invoked, the first pre-condition would be that an employer-employee relationship has to be established. The said employees, who are Respondents in the present petition had filed a petition for regularisation which is **ID No. 3/2004**, which continues to remain pending before the CGIT, and in the

meantime, the contractor has been changed by the CPWD leading to the termination of the said employees. In view of the said termination, the impugned order has been passed in the applications under Section 33 of the Industrial Disputes Act, 1947, moved by the Petitioner.

6. Accordingly, she submits that without the pre-condition of there being an employer-employee relationship having been satisfied, the Application of the Workmen under Section 33 of the ID Act could not have been adjudicated by the CGIT. She submits that the CGIT ought to have first decided the petition relating to regularisation, and only then proceeded to examine the issue under Section 33 of the ID Act.

7. On the other hand, Mr. Anuj Aggarwal, ld. counsel appearing for the Respondent-Workmen, first of all draws the attention of the Court to the order dated 4th July, 2000, passed by a ld. Single Judge of this court in **WP(C) 3381/2000** titled ***Ram Raj Yadav and ors. v. Union of India***, wherein it was directed that the CPWD would not replace the services of the very same Workmen in this petition, with another contract labour. Accordingly, he submits that the termination of the Workmen on 1st February, 2018 in this case by the Petitioner, when a new contractor was engaged, is in the teeth of the order passed by the ld. Single Judge in respect of the very same Workmen on 4th July, 2000. He, therefore, submits that the order passed by the CGIT is valid and ought to be upheld by this Court.

8. Heard ld. Counsels for the parties and perused the record. The Court has considered the competing contentions of the parties.

9. It is noted that the present petition relates to three Workmen, namely, Mr. Ram Raj Singh, Mr. Raj Kumar and Mr. Bhupender Singh, who have all

been working with the CPWD in the Electric Division since 1996-2000. The details of the Workmen are as under:

<i>Name</i>	<i>Father's Name</i>	<i>Designation</i>	<i>Date of Joining</i>	<i>Place of work</i>	<i>Current Salary</i>	<i>Comparable Salary Drawn Regular Employees of CPWD</i>
<i>Ram Raj Singh</i>	<i>Sh. Gorelal</i>	<i>Fire Alarm Operator</i>	<i>8.8.98</i>	<i>Shastri Bhawan under Executive Engineer ED-8, Vidhut Bhawan New Delhi-1</i>	<i>2652/-</i>	<i>6030/-</i>
<i>Raj Kumar</i>	<i>Sh. Mohar Singh</i>	<i>Fire Alarm Operator</i>	<i>6.12.99</i>	<i>Shastri Bhawan under Executive Engineer ED-8, Vidhut Bhawan New Delhi-1</i>	<i>2652/-</i>	<i>6030/-</i>
<i>Bhupender Singh</i>	<i>Sh. Jangjit Singh</i>	<i>Fire Alarm Operator</i>	<i>4.7.96</i>	<i>Shastri Bhawan under Executive Engineer ED-8 Vidhut Bhawan New Delhi-1</i>	<i>2652/-</i>	<i>5075/-</i>

10. It is clear that the Respondent- Workmen have rendered services to the CPWD for more than 20 years as contractual employees. This long period of service led to the filing of the Industrial Dispute being **ID No. 03/2004**, wherein they sought regularisation in the CPWD.

11. It is inexplicable as to why the said petition for regularisation has been pending for more than 15 years before the CGIT, which has led to so many complications for both the CPWD and these Workmen. The CGIT ought to have ideally heard and disposed of the Industrial Dispute which is already pending, before considering the Application of the Workmen under Section 33.

12. However, be that as it may, the CPWD also cannot completely negate the order dated 4th July, 2000, passed by this Court. In response to the said order, Ms. Raju, Id. counsel for the Petitioner submits that the legal position in respect of contractual employees has changed since the said order was passed. The judgment of the Supreme Court in **Air India Statutory Corporation v. United Labour Union and Ors. [AIR 1997 SC 645]** held the field when the said order was passed on 4th July 2000, however the same has now been reconsidered in the judgment of the Id. Supreme Court in **Steel Authority of India and Ors. v. National Union Waterfront Workers and Ors. [(2007) 7 SCC 1]**. She submits that in view of the changed legal position, the new contractor had come in and had not engaged the Workmen who are the Respondents in this case.

13. It is noted that the order dated 4th July, 2000 passed by a Id. Single Judge of this Court in **WP(C) 3381/2000** titled **Ram Raj Yadav and ors. v. Union of India**, is in respect of the very same Workmen, where the Court had directed as under:-

“ The question of issuance of a notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 in respect of Fire Operators is pending consideration before the Central Advisory Contract Labour Board.

Under these circumstances, I am not inclined to entertain this writ petition.

Learned counsel for the Petitioner states that the services of the Petitioners are likely to be terminated and replaced with other contract labour. It is made clear that the Respondent will not replace the services of the Petitioners with another contract labour.

With these observations, the writ petition stands disposed of.”

14. In the light of this order, this court is of the opinion that even if the legal position had changed, the CPWD, being a Government Agency, could not have acted in a manner which is contrary to the said order. The correct way of proceeding for the CPWD would have been to approach the Court seeking a clarification/modification of the said order, which they clearly did not do. The order was passed almost 21 years ago, and despite the change in legal position argued by Ms.Raju, the CPWD did not take any steps to seek modification or an appeal against the said order. Accordingly, in the opinion of this court, the said order squarely applies *qua* the employees concerned and, therefore, they could not have been terminated in this manner by the new contractor, and the Petitioner in this petition- CPWD could not have permitted the same, having been a party to the order dated 4th July 2000.

15. Further, the manner in which CGIT's proceedings are being conducted is also not acceptable. The main Industrial Dispute, concerning regularisation of these Workmen, ought to have been decided expeditiously,

which would have also ensured that the subsequent events relating to termination, filing of applications under Section 33 etc., could have been avoided and the workmen had some certainty.

16. Under these circumstances, the following directions are issued:

- (i) In view of the order dated 4th July 2000, which is still in operation, all the three Workmen who are the Respondents in this petition, shall be engaged by the new contractors, who are presently rendering their services for the CPWD. They shall be engaged w.e.f. 10th August, 2021 itself.
- (ii) The CGIT would now proceed to decide the Industrial Dispute between the parties i.e., **ID No. 03/2004** and shall finally dispose of the same within a period of two months from today i.e., on or before 15th October, 2021.
- (iii) The impugned order under Section 33 of the ID Act, giving various directions in respect of reinstatement and other payment of back wages etc., is set aside. The application under Section 33 of the Workmen shall be adjudicated afresh along with the **ID No. 03/2004** and shall be disposed of on or before 15th October, 2021. No unnecessary adjournments shall be granted to either of the parties in both the main dispute as also the application.

17. Ld. counsel for the parties submit that the matter may be taken up before the CGIT in physical court, if virtual hearing is not possible. Accordingly, all parties are directed to appear before the CGIT on 12th August, 2021.

18. With these observations, the present petition and all pending applications are disposed of. Let a copy of this order be sent to the Presiding

Officer, CGIT cum Labour Court, Dwarka Courts, Delhi. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

AUGUST 4, 2021
MR/AK

