

\$~33 & 34

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

Date of decision: 27th October, 2021

+ **W.P.(C) 4834/2020**

ALL INDIA GENERAL KAMGAR UNION Petitioner
Through: None.
versus

UNION OF INDIA & ORS. Respondents
Through: Mr. B.S. Shukla and Mr. Waize Ali
Noor, Advocates for Mr. Kirtiman
Singh, CGSC.
Mr. Atin Puniyani, GP for UOI.

34 AND
+ **W.P.(C) 5697/2020**

NITI TYAGI AND ORS Petitioners
Through: None.
versus

UNION OF INDIA AND ORS Respondents
Through: Mr. B.S. Shukla and Mr. Waize Ali
Noor, Advocates for Mr. Kirtiman
Singh, CGSC.
Mr. Atin Puniyani, GP for UOI.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petitions have been filed by the Petitioners who are contractually employed Workmen, working with the Respondent/Hospital-Lady Hardinge Medical College and Hospital (*hereinafter "Hospital"*), challenging the illegal termination of their services. The grievance of the Workmen is that they that they had been earlier engaged by one contractor,

Jai Balaji Security Services, and have been working in the Hospital as Multi-Tasking Staff (*hereinafter* “MTS”) since 2015. However, when the new contractor stepped in, their services were terminated. Further, it was alleged that the Workmen were told by the new contractor engaged by the Hospital that unless and until they pay money to the new contractor, they would not be retained by the Hospital. It was also submitted that several of the Workmen had, in fact, paid the new contractor and their services had been retained by the Hospital.

3. Vide orders dated 31st July, 2020 in ***W.P. (C) 4834/2020***, and 27th August 2020, in ***W.P. (C) 5697/2020***, this Court had impleaded the new contractor, M/s. Competent Services (Regd.), as Respondent No.4 in the matter. This Court had also directed that the new contractor shall engage the services of the Petitioners, and their salaries would be paid to them. Till the next date, services of the Petitioners were directed to not be terminated. Broadly, this Court had noticed that such grievances against contractors were being raised in many cases. Considering the fact that such a grievance, that a new contractor has been engaged and is charging commission under the guise of “security deposit”, both in lump-sum and as a cut in monthly salaries from the employees, was being made against a reputed hospital, the Secretary, Minister of Health & Family Welfare was directed to nominate a senior official to look into this matter concerning the Lady Hardinge Medical College and submit a report before the next date of hearing. The operative portions of the said orders read as under:

Order dated 31st July, 2020 in W.P. (C) 4834/2020:-

“3. Mr. Gunjan Singh, ld. counsel appearing for the Petitioner submits that there has been no complaint against all these employees and they were being

regularly paid salaries through the earlier contractor i.e. Jai Balaji Security Services. A new contractor is now being engaged by the Hospital and the Petitioners have been told that unless and until they pay money to the new contractor, they would not be retained by the Hospital. It is also submitted that several of the employees have in fact paid the new contractor and their services have been retained by the Hospital.

4. This Court has noticed that such grievances against Contractors are being raised in many cases. Considering the fact that such a grievance, that a new contractor has been engaged and is charging commission both in lump-sum and as a cut in monthly salaries from the employees has been made against a reputed hospital, a senior official of Ministry of Health shall look into this matter concerning the Lady Hardinge Medical College and submit a report before the next date of hearing.

5. Insofar as the 35 employees who are working as MTS are concerned, it is directed that the new Contractor i.e. M/s Competent Services (Regd.) shall engage the services of the Petitioners on the same terms and conditions and shall not charge any commission or premium from them. M/s Competent Services (Regd.) shall also ensure that the complete salaries as agreed to in the contract would be paid to them. Till the next date of hearing, the services of the Petitioners shall not be terminated. M/s Competent Services (Regd.) (M:9811021459) shall be served with a copy of this order by the ld. counsel for the Hospital to ensure compliance.

6. Mr. Shukla, ld. counsel appearing for the Hospital is directed to place on record a copy of the contracts with the earlier contractor as well as with the new Contractor.

7. M/s Competent Services (Regd.) is impleaded as Respondent No.4. Let the amended memo of parties be

filed within one week.

8. Copy of this order be communicated by Mr. Kirtiman Singh CGSC, to the Secretary, Ministry of Health to nominate an official for looking into the matter, as directed above. List on 5th October, 2020."

Order dated 27th August 2020, in W.P. (C) 5697/2020:-

"7. The present Petitioners are also similarly situated as they have been working in the Hospital for a period between 1 to 5 years. They are already performing their tasks in the Hospital, which is a critical and essential service, especially during COVID-19 pandemic. Under such circumstances, the Hospital needs to ensure that there is no disruption in the services being provided to the patients and to the extent possible, the experienced staff should remain in the Hospital.

8. The position as to whether the new contractor is retaining the old staff of the earlier contractor is not clear at this point as there is no list of employees of both the earlier contractor and the new contractor. Accordingly, the Hospital shall file on record the list of employees of the earlier contractor - Respondent No.3 and the list of employees of the new contractor - Respondent No.4, along with their counter-affidavit, before the next date of hearing.

9. Insofar as the present Petitioners are concerned, it is directed that the new Contractor i.e. M/s Competent Services (Regd.) shall engage the services of the Petitioners on the same terms and conditions and shall not charge any commission or premium from them and the services of these Petitioners shall not be terminated till the next date.

10. Copy of this writ petition, along with any evidence, which the Petitioners may have in respect of demand of security deposit or any other amount being demanded by the new contractor shall be submitted to the Enquiry Officer Mr. Gulam Mustafa,

Director (A&V) (Mob. 9810696707) from the Ministry of Health, so as to enable the submission of report before this Court.

11. Respondents are permitted to file their counter affidavits within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

12. List on 5th October, 2020 along with W.P.(C) 4834/2020.”

4. Thereafter, the Ministry of Health & Family Welfare placed on record the Report of the Enquiry Officer, Mr. Ghulam Mustafa, Director (A & V) Directorate General of Health Services. The said Report was forwarded to the Committee constituted by the Ministry of Health and Family Welfare for suggesting further action to be taken on the Enquiry Report.

5. Vide order dated 23rd July, 2021, this Court was informed that all the Workmen have been taken back into service. The Enquiry Report submitted by Mr. Ghulam Mustafa as also the Committee's report for suggesting further action to be taken pursuant to the Enquiry Report were placed on record. A Report dated 19th October, 2020, on the actions proposed and measures taken on the Enquiry Report, was also filed by the Lady Hardinge Medical College and Associated Hospitals. Considering the contents of the reports, it was deemed appropriate to allow all counsels for the parties to peruse the said reports. Hence, vide order dated 30th July, 2020, copies of the said reports were directed to be furnished to the Id. Counsels appearing in the matter.

6. The Court has also perused the Enquiry Report, the Committee's Report suggesting further action as well as the Action Taken Report filed by the Hospital. It is noticed that in a large number of labour related matters, allegations are raised by the Workmen that once the contractor has changed,

the new contractors demand lump sum amounts from the proposed employees who are to be engaged. Even those Workmen who have been working for several years are forced to make payments to the new contractors for the continuance of their services. The Enquiry Report submitted by Mr. Ghulam Mustafa is a detailed Report where several gaps were identified by the said Enquiry Officer. Though statements of various workers were recorded stating that they were forced to make payments to the contractor, the Enquiry Officer could not lay hands on any documentary evidence in respect thereof.

7. Accordingly, the Enquiry Officer has made some suggestions which have now been considered by the Committee appointed by the Ministry of Health & Family Welfare. The Committee has deliberated upon the matter and its observations in respect of the Enquiry Report are extracted below:

“ 7. Observations on the Inquiry Report:

(i) *The contemplations as opined by the Inquiry Officer in the report vis-a vis the depositions of the petitioners of above-mentioned Writ Petitions and statements made by the Hospital Staff/Officers has been examined at length. Detailed examination of the report suggest that though there has been written depositions about demand of money in the form of registration money/security, the allegations are not substantiated by any evidence as directed by the Hon'ble Court in para 10 of its Order dated 05.10.2020. The Committee observed from that the written depositions of the petitioners that aggrieved with their discontinuation by the new vendor they had approached the Hon'ble High Court on the ground of non-inclusion of their names in the finalized list of and have made allegations in the petitions that there was some cases of demand of money on the pretext of*

Registration/security deposits. Though the Inquiry Officer in its findings suggest that the matter may be further enquired by competent and specialized agency, its observation at 4.2.2 of the report sums up that the outsourced MTS could not produce any evidence in support of their claim of payment of security/registration fee to the outsourcing agencies, the allegations of making lump-sum payment to the vendors by the outsourced MTS could not be clearly established due to lack of documentary evidence. The Committee, in view of the foregoing is of the view that the matter does not need to pursue further.

(ii) The committee observed that the allegations raised regarding cut in the monthly salaries have not even been reported by the petitioners during their interactions with the Inquiry Officer. Hence, the issue might have been raised with the object of job continuation. Even the Inquiry officer in its report has observed that "their remunerations/salary is being made in their respective bank accounts and no cash payment is being made. As such, there seems to be no scope of cut in monthly wages".

8. The Committee has also examined the Action Taken Report dated 19th October, 2020 submitted by the Hospital. The observations of the Committee in respect of the said Report are extracted below:

“8. Examination of the actions/measures taken by the Hospital:

(i) Since the report of the Inquiry Officer was forwarded to Lady Hardinge Medical College & Associated Hospitals with directed to submit detailed actions proposed to be taken by them on the observations made by the Inquiry Officer in his report, it was important on the part of the Committee to examine and to deliberate upon the report submitted by the Institution titled "Actions proposed and measures taken on the Inquiry Report of Shri

Ghulam Mustafa, Director (A&V), DGHS, Ministry Of Health & Family Welfare" (Annexure-I). The Committee in its meeting also had deliberations with Shri Sonu Kumar, Deputy Director (Admn.), Lady Hardinge Medical College & SSKH on 22.10.2020.

(ii) The Committee observed that for selection of the firm through GeM, the Institution has formed two separate and independent committees viz. Bid finalization Committee and Bid evaluation Committee comprising of non-administrative faculty members and has taken necessary approval of the Ministry for award of the contract. Few gaps viz. (i) little awareness amongst the outsourced workers about their dues and statutory deductions, (ii) No jurisdiction of the Principal Employer in the selection process and (iii) Marginal Service Charge have been put forth by the Institution.

iii) The Institution has highlighted the steps taken by them with specific reference to the remarks of Inquiry Officer relating to recommendations of the Committee that visited the Institution during July, 2019 and January, 2020. It has been submitted that most of their staff members in the Administration have suffered from COVID-19 during the last 07 months leading to partial disruption in the services and there was no intentional delay. The Institution has also proposed that in case there has been some established proof to substantiate the observations of the Inquiry Officer, the same will be dealt strictly by them in terms of the penal provisions of CCS(CCA), Rules, 1965. The Committee after going through the observations of the Inquiry Officer and submission of the Institution is of the view that there has not been any evidence against the hospital staff. Hence the request of the Institution for dilution of the observations against the LHMC officials without any evidence in the Inquiry report merits consideration.

(iv) Apropos interaction with Deputy Director

(Admn.) the committee came to understand that the current strength of Administration Wing of LHMC is inadequate to meet the work pressure given the shortage of staff and expansion of the services of Hospital in general and additional burden due to COVID pandemic. The Committee was informed that Cadre Review proposal in respect of LHMC & Associate Hospitals is under consideration wherein 03 posts of Deputy Director (Admn.) and 01 post of Joint Director besides more posts in certain administration cadre for the Institution is under consideration in the Ministry of Health & Family Welfare. The Committee accordingly coincides with the observations of LHMC as contained in para 5.14 of their report dated 19.10.2020 regarding action taken by the Administration in spite of limited available resources.

(v) The report submitted by the Lady Hardinge Medical College on the measures taken by them and vis-a-vis gaps indicated in the Inquiry report are welcome steps and indicate their seriousness on the issue. Further there has neither been any specific allegation against the LHMC administration nor there do any evidence against the officials. With this, the Committee is of the opinion that the observations of the Inquiry Officer in para 6.3 and para 5.3 to that extent may be considered for dilution. On the preventive side, a notice dated. 14.10.2020 has been issued that in case there is any case of demand of money for employment or for any other work done, the same may be reported to Vigilance Officer along with evidence. The outsourced workers have also been directed to come forward to file F.I.R. along with documentary evidence etc. on the above issue. Salary details of the outsourced employees has been displayed by putting Boards at prominent places as well as on the website to avert any chance of salary cut. A Committee of senior faculties has been

constituted to interact with the outsourced employees on quarterly basis to check if they have paid any bribe/commission for their appointment/continuance and that they are getting salaries as per the wages notified by the Government.”

9. Thereafter, in light of the Report of the Enquiry Officer as well as the Action Taken Report dated 19th October, 2020 submitted by the Hospital, the Committee has recommended certain reforms that need to be introduced in all the Central Government Hospitals, including Lady Hardinge Medical College and Associated Hospitals, to ensure that there is a more transparent environment and there is no scope left for any corrupt practices. The relevant portion of the Committee’s Report is set out below:

“9. Action taken Report of the Committee

In view of the contents of the Inquiry Report, Action Taken Report submitted by the Hospital and further deliberations, the Committee is of the view that there is a need of introduce some more reforms in the ongoing system in all the Central Government Hospitals including in the Lady Hardinge Medical College & Allied Hospitals to ensure more transparent environment so that no scope is left for any such alleged corrupt practices: -

(i) In future, the Hospital will incorporate suitable/mandatory provisions in the Service Level Agreement (SLA) to fix the accountability of the selected vendor, in case there is any violation(s) of the SLA;

(ii) The Hospital Authority will ensure the verification of educational qualifications and other eligibility conditions by the vendor required for the post (s) so as to ensure that right person is engaged for the right job.

(iii) Every outsourced workman may be provided with detailed terms & conditions governing their engagement. This may also include the details of job requirements; attendance norms; leave entitlements; and facility available under ESI etc;

(iv) Salary Slips may be issued every month to each of the outsourced workmen showing the breakup of admissible salary and statutory deductions towards EPF/ESI etc. Net salary payable through Bank must reflect on the salary slips.

(v) The Hospital may be asked to explore the introduction of the Bio-metric attendance system in respect of all outsourced workers, as and when the COVID-19 pandemic recedes;

(vi) The Hospital Authority will undertake rotational transfers of the persons holding sensitive posts on regular basis, as per the CVC guidelines.”

10. The conclusion of the Committee constituted by the Ministry of Health & Family Welfare in its Report is as under:-

“Conclusion-The Committee after taking into consideration the reports Submitted by Shri Ghulam Mustafa, (Director) [A&V] and the Lady Hardinge Medical College & Associated Hospitals, overall circumstances leading to such allegations, action taken by the Institution and considering the gravity of the matter is of the view that the allegations of charging registration amount/security and monthly salary cut by the vendor has not been proved in the Inquiry Report and hence not a fit case for referring to any specialised agency for further investigation for want of documentary evidence. The Committee is of firm opinion that measures suggested by the Committee needs to be followed scrupulously to avoid any such Incident in future and the matter be laid to rest after issuing suitable advisory to the Outsourcing

agency concerned as well as to the institute.”

11. A perusal of the Report by the Committee clearly shows that there were several gaps in the recruitment of contractual workers and several reforms have been suggested. Accordingly, the steps taken by the Hospital and the further steps suggested by the Committee, are reiterated below, in order to maintain uniformity, transparency and consistency in the recruitment of contractual workers. Accordingly, the Lady Hardinge Medical College and Associated Hospitals as also other Central Government Hospitals, in order to ensure that no improper and corrupt practices are indulged in by the contractors, shall take the following steps, in respect of engagement of contractual workmen through contractors:

- a. For selection of the contractual firm through GeM, two separate and independent committees, viz., Bid finalization committee and Bid evaluation committee comprising of non-administrative faculty members would be constituted;
- b. The approval, if necessary, shall be obtained even from the Ministry for award of the contract, after the Bids are evaluated and finalized;
- c. The hospital administration shall create awareness amongst the outsourced workers about their dues and statutory deductions. For the said purpose, when they report for duty for the first time, a senior person from the hospital administration shall try and hold an interactive session in the presence of the contractor to sensitize them as to their rights and duties;
- d. Proper and transparent criteria shall be fixed, and once the Contractor has finalized the workers, the administration shall

also verify their identity cards and documents before they are allowed to report for duty;

- e. Adequate administrative personnel shall be recruited in the hospital to deal with the contractual workers, and if there are any vacancies, steps to fill up the same shall be taken expeditiously;
- f. Salary details of outsourced employees shall be displayed by putting up Boards in prominent places in the premises to avoid any chances of salary being cut or unauthorized deductions being made by the contractor;
- g. A committee of at least two senior persons – one from administration and one from amongst the faculty members, shall be constituted to interact with the outsourced employees on a quarterly basis to check if they are facing any difficulties, including difficulties in respect of the salaries and other payments. The said Committee shall also keep a check on their efficient & qualitative delivery of services;
- h. Suitable provisions shall be incorporated in the Service Level Agreement (SLA) to fix the accountability of the selected vendor in case of any violations of the SLA.
- i. The Hospital Authority shall also ensure the verification of the educational qualifications as well as other eligibility conditions by the vendor required, so as to ensure that the right person is engaged for the right job.
- j. Every outsourced workman may be provided with detailed terms and conditions governing their engagement with the

hospital, including the details of job requirements, attendance norms, leave entitlements, and facility available under the ESI, amongst others.

- k. In accordance with the Committee's recommendations, salary slips may be issued each month to the outsourced workmen showing the breakup of admissible salary and statutory deductions, and the net salary payable through the Bank must reflect on the salary slips.
 - l. The Hospital shall also consider introducing a system of biometric attendance in respect of outsourced workmen.
 - m. Further, as per the guidelines issued by the CVC, rotational transfers of persons holding sensitive posts on a regular basis shall also be undertaken.
 - n. A complaint box shall be put up in a prominent place in the premises of the hospital, so that any contractual workers who have complaints against the contractors would be able to submit their complaints in those boxes, even in an anonymous manner. These complaints shall also be looked into, and action shall be taken within two weeks of receiving the said complaints.
12. The hospital administration shall ensure that the abovementioned steps are taken and are monitored on a regular basis. The responsibility for ensuring that the steps as directed hereinabove are taken, would be of the Medical Superintendent of the hospital, who shall ensure that the contractual workers are not in any manner abused or misused, and the proper payment of their salaries, in accordance with the amount being released by the hospitals are, in fact, being made by the Contractors.

13. This Court records its appreciation for the detailed enquiry conducted by Mr. Ghulam Mustafa, in his Enquiry report. In view of the said Enquiry Report and the subsequent Action Taken Report dated 19th October, 2020 filed by the Lady Hardinge Medical College & Associated Hospitals, so also the Report of the Committee constituted by the Ministry of Health & Family Welfare, no further orders are called for in these matters.

14. Let a copy of this order as well as the Report of the Committee constituted by the Ministry of Health & Family Welfare be circulated to Lady Hardinge Medical College and Associated Hospitals as also all other Central Government Hospitals for appropriate implementation of the aforementioned directions.

15. It is made clear that the continuation of contractual workers shall always be in accordance with law. The present order shall not be construed as giving any permanence to the contractual employees.

16. With these observations, the present petitions, along with all pending applications, is disposed of.

17. 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

OCTOBER 27, 2021/MR/AD

(Corrected & released 30th October, 2021)