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

+ W.P.(C) 9226/2022

SARASWATI & ORS.

..... Petitioners

Through: Mr.Rajiv Agarwal and Ms.L.Gagmei,
Advocates

versus

THE CHIEF ELECTORAL OFFICER, GNCTD

..... Respondent

Through: Mr.Mohit Bhardwaj, Advocate

+ W.P.(C) 9246/2022

ARUN & ANR.

..... Petitioners

Through: Mr.Rajiv Agarwal and Ms.L.Gagmei,
Advocates

versus

CHIEF ELECTORAL OFFICER, GOVERNMENT OF NCT OF
DELHI

..... Respondent

Through: Mr.Naresh Kumar Beniwal and
Mr.Nikhil Beniwal, Advocates

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Date of Decision: 03rd June, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

C.M.27661/2022 in W.P.(C) 9226/2022

C.M.27726/2022 in W.P.(C) 9246/2022

(exemption)

W.P.(C) 9226/2022 & W.P.(C) 9246/2022

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Exemptions allowed subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 9226/2022 & C.M.27660/2022

W.P.(C) 9246/2022 & C.M.27725/2022

1. The present petitions have been filed by the petitioners aggrieved of the orders both dated 18.05.2022 in ID No.109/2022 titled ***Smt. Saraswati & 8 others vs. The Chief Electoral Officer, GNCTD*** and I.D. No.110/2022 titled ***Shri Arun & Smt. Payal vs. The Chief Electoral Officer, GNCTD***. The entire dispute in the present cases can be summarized as follows:

The petitioners in the present case were taken on contract by the respondent for performing duty of Data Entry Operators. While doing so, an industrial dispute was raised which was referred to the Tribunal with the reference regarding their regularization in the service with the management Chief Electoral Officer. While the matter was pending before the Tribunal, the respondents initiated the bidding process for procuring Data Entry Operators through Government e Marketplace i.e. GEM. Pursuant to the initiation of this process, the claimants/workmen filed an application under Section 33A of the Industrial Disputes Act alleging that while the proceedings are pending before the Tribunal for adjudication on receipt of a reference from the appropriate government to adjudicate on the claim of workmen for regularization of their service, the terms and conditions of their service cannot be changed. The apprehension of the workmen are that after initiating the bidding process, they shall be placed under the contractor, whereas presently



they are working directly under the Chief Electoral Officer and getting payment from them. The petitioners/workmen are aggrieved of the view of the tribunal that the complainants working as contractual employees under the respondent if shifted as the employees under the contractor/service provider procured through GEM there would be continuity of their service with the wage they are presently getting, the action would not amount to change of service condition.

2. In the impugned orders, the tribunal did not restrain the respondent from continuing with the bid process. However, directed the respondent to ensure the continuance of their service with the protection of wages and other benefits they are getting under the management till final adjudication of ID No.18/22 & ID No.20/22.
3. The submission of the learned counsel for the petitioner is that it is not disputed that presently the petitioners are working as contractual employees and their case for regularization is pending adjudication before the tribunal. However, if they are taken out of the roll of the respondent and brought on the roll of the contractor, it would amount to termination of their service, which amounts to change of service condition and violative of Section 33 of the Industrial Disputes Act pending adjudication before the tribunal.
4. Learned counsels for the respondents have submitted that the bidding process has been initiated in terms of the policy decision of the government. Learned counsel for the respondent submits that the bidding process has been initiated in accordance with the policy of the government and at present there is no decision of the authority to remove the petitioners from their present job.



5. Counsels for the respondent has relied upon the order passed by this court in ***Delhi Prashasan Vikas Vibhag Industrial Employees Union vs. Chief Electoral Officer & Ors.*** W.P.(C) 6055/2021 dated 26.07.2021 to emphasize that bidding process has been initiated in accordance with the policy of the government.
6. I have heard the submissions of the parties.
7. It has come on record that at present, the respondents have no plans to remove the service of petitioners/workmen. However, the case of the respondent is that the bidding process has been initiated in accordance with the policy of the government and the present petitioners would now be taken through contractor. The continuity of the service of the petitioners does not seem to be in any dispute. However, the question is whether the petitioners, who are now contractual employees under the respondent can be employed through the contractor and will that amount to change in the service conditions? The question is that whether change in the conditions of service will be in violation of Section 33 of the Industrial Disputes Act.
8. Issue notice. Mr. Mohit Bhardwaj & Mr. Naresh Kumar Beniwal, counsels of the respondents accept notice.
9. The aforesaid questions are to be determined by the tribunal. However, pending adjudication before the tribunal, *status quo* shall be maintained in respect of service condition of the petitioners. The respondents shall not take any steps for engaging the petitioners through contractor till the same is finally adjudicated by the tribunal.
10. With these directions, both the writ petitions along with pending applications stand disposed of.



11. *Dasti.*

DINESH KUMAR SHARMA, J

JUNE 3, 2022

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