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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 4th July, 2022

+ **W.P.(C) 2656/2007 & CM APPL. 12148/2022**
 EXECUTIVE ENGINEER U DIVISION Petitioner
 Through: Ms. Saroj Bidawal, Panel Counsel
 (M:9810340866)

versus
 RAM PRASAD & ANR. Respondents
 Through: Ms. Anita Sharma & Mr. Rajat
 Kapoor, Advocates. (M:9811181737)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. The present petition has been filed by the Petitioner/Management - CPWD challenging the impugned Award dated 7th November, 2006 passed by the CGIT in *I.D. No.65/2002* titled *Shri Ram Prasad & Shri Raja Ram v. The Executive Engineer, New Delhi*. Vide the impugned Award, the CGIT has held that the non-regularization of service of the Respondents - Workmen, Mr. Ram Prasad and Mr. Raja Ram, and continuing them on a casual basis indefinitely, was neither fair nor reasonable. Accordingly, the CGIT directed regularization of the said two Respondents within two months from the date of the impugned Award.

2. The Petitioner has challenged the impugned Award primarily on two grounds:

- i. That the services of both the Respondents - Mr. Ram Prasad and Mr. Raja Ram, were engaged pursuant to a competitive bids which were floated for the purposes of engagement of Fitter and



Beldar. The Respondents submitted their quotations which were found to be competitive, and their services were engaged from time to time. The payment was also made on a per day basis.

- ii. That the judgment in ***Public Works Department v. Shri Satya Pal [W.P. (C) 7032/2005 decided on 19th October, 2005]***, relied upon by the Respondents, would not apply to the present case, as the Workmen in the said case were engaged as drivers on a monthly basis and the facts of the said case are clearly distinguishable.

3. Ms. Bidawat, Id. Counsel for CPWD has made the following submissions:

- i. The work orders in the case of the present two Respondents clearly show that these are contracts for service. There were several conditions which were imposed by the said work orders and the same were clearly accepted by the Respondents.
- ii. The Respondents have been described as contractors and not as workers. She submits that it was not necessary for them alone to render services and the Respondents could have, in fact, deputed anyone else for rendering the services.
- iii. Considering the nature of the work orders which have been placed on record, as also, the judgment of the Id. Single Judge of this Court in ***Daya Shankar Prasad v. Director General of Works CPWD [2013(133) DRJ 155]***, the services of the Respondents are not liable to be regularised, as they are being engaged from time to time on the basis of work orders. The Id. Division Bench of this Court has also dismissed the ***LPA***



No.777/2012 decided on 27th November, 2012 challenging the judgment in *Daya Shankar Prasad (supra)*. Hence, the facts of the present case would be governed by the said judgments.

iv. Ms. Bidawat, Id. Counsel also distinguishes the judgment in *Satya Pal (supra)* by showing that the conditions of service in the said case are also different from the present petition.

4. Mr. Kapoor and Ms. Sharma, Id. Counsels have however placed reliance on the judgement in *Satya Pal (supra)* and submits that the said judgment has been upheld by the Supreme Court. Id. counsel further submit that the Respondents have rendered services for a long duration with the Petitioner and the CGIT has rightly regularised their services.

5. This Court has perused the work orders which have been placed on record. The conditions of service, as per the said work orders, are extracted below:

*“Order for work described below given to **Sh. Ram Prasad, Contractor**, H. No. 186, Block-I, Mir vihar, Madan Pur Dabbas, Delhi-81.*

XXX

*Name of work: - A/R & M/O 9 to 14 Blocks at CGO Complex, Lodhi Road, New Delhi, during 2012-13.
(SH:- Providing the services of Fitter)*

Supply the services of Fitter to attend day to day required complaints related to Fitter complaints received in enquiry Office of Sub-Division II. The required material shall be supplied by the department free of cost. The job is considered for period of 9.00 AM to 5.00 P.M.



General Conditions:-

The payment for the work will be made once in a month.

The contractor shall arrange his own T & P.

Services will be 08 hours a day from 9.00 AM to 5.00 PM.

Daily attendance of the workers or his authorized representative shall be made in the Register maintained by J.E. in charge of work.

The contract can be terminated at any time without assigning any notice.

The contractor or his worker shall have no claim of any nature other than the payment mentioned above.

XXX XXX XXX

*“Order for work described below given to **Sh. Raja Ram, Contractor**, Behara hazipur Ambedkar Colony, Loni Boarder, Gaziabad, (U.P.).*

XXX

Name of work: - A/R & M/O 9 to 14 Blocks at CGO Complex, Lodhi Road, New Delhi, during 2012-13.

(SH:- Providing the services of Beldar)

Supply the services of Beldar to attend day to day required complaints related to Beldar complaints received in enquiry Office of Sub-Division II. The required material shall be supplied by the department free of cost. The job is considered for period of 9.00 AM to 5.00 P.M.

General Conditions:-

The payment for the work will be made once in a month.

The contractor shall arrange his own T & P.

Services will be 08 hours a day from 9.00 AM to 5.00 PM.

Daily attendance of the workers or his authorized representative shall be made in the Register maintained



by J.E. in charge of work.

The contract can be terminated at any time without assigning any notice.

The contractor or his worker shall have no claim of any nature other than the payment mentioned above.”

6. A perusal of both the work orders extracted above shows that quotations were called for, from the contractors, and after perusing the competitive quotations, the contract was awarded to the said Respondents. Both the Respondents are clearly described as contractors in the said work orders, and not as workmen. The amount payable is also on a per day basis i.e., Rs.339/- per day and Rs.256/- per day, for a period of 365 days. The conditions of service extracted above also shows that the attendance could be of a different person and need not of the same very contractor who was being awarded the work.

7. The CGIT has relied upon the judgment in ***Steel Authority of India & Others v. National Union Waterfront Workers and Others [(2001) 7 S.C.C. 1]***. However, the said judgment would not have any application in the present case as the said case relates to contractual labour, and not persons who have received work orders described as contractors, as in the present case.

8. The facts relating to the conditions under which the work orders are placed on these persons seem to have been completely ignored by the CGIT without any finding in that regard. A perusal of the conditions would show that the same are in the nature of contracts awarded for a particular service. The contractor himself could work or could also depute any other worker for rendering the services. The same is not in the nature of employment. In the case of ***Satya Pal (supra)***, a perusal of the SLP paperbook which has been placed on record shows that the conditions of service in ***Satya Pal (supra)***



were as follows:

“Terms & Conditions

- 1. Work shall be done as per direction and specification of engineer in charge.*
- 2. No accommodation shall be provided to the driver.*
- 3. The driver has to work on duty 9.00 am to 5.00 pm
xxx Hrs lunch at 1.00 pm.*
- 4. The driver has to pick up the vehicle from the fixed place and after office hours as shown at Sl. No.3 above. He has to park the vehicle good condition at the same fixed place.*
- 5. The driver has to make his own arrangement for convenience to reach the place of work and back to home.*
- 6. The driver cannot refuse to work after office hours for such extra work. He will be paid proportionate wages per extra hours O.T. as per departmental rules.*
- 7. The work order will held on good for two months.*
- 8. The payment shall be made once in a month. The work order shall be terminate / suspended after having issued two days notice.*
- 9. The driver shall be fully responsible for the safe driving of the vehicle handed over him and for any damage to vehicle of he informed at fault.*
- 10. The performance of the driver shall be viewed a receipt of performance report from engineer in charge.*
- 11. The engineer has to furnished a character certificate from or gazetted officer in Central Govt.*
- 12. The total waged paid in a month shall not exceed Rs.1328/- p.m. In any condition in case the drive is kept on duty more than 26 days in a month of 30 days (for Ex) he will be paid the proportionate wages as O.T.A. for the same.*
- 13. Yours letter No. Nill dated Will form part of this work order.*
- 14. The payment of Rs.1328/- in a month of 30 days*



is for 26 days working.

15. *The payment shall be made through of cheque.*

16. *In case the driver absent himself from duty or not attend the duty properly wages to the day of absence will not be paid.*

17. *Security or bond guarantee from a Gazetted officer may be enclosed.”*

9. In ***Satya Pal (supra)***, a monthly payment was to be made to the specific driver who was allotted the work order. The conditions of service are also different from the work orders which are extracted above. Thus, in the opinion of this Court, the present case is clearly distinguishable from ***Satya Pal (supra)***.

10. In ***Daya Shankar Prasad (supra)***, the Id. Single Judge of this Court has clearly held as under:

“10. However, this conclusion of the CGIT would still not entitle the respondent to get the relief which the CGIT gave him under the impugned Award. The CGIT has not given any reason as to why the termination of the services of the respondent was illegal. Learned counsel for the respondent had submitted that since undisputedly the respondent had worked with CPWD for more than 240 days from July, 1992 till August, 1994 his services could not be terminated by the petitioner without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act. However, in my view there is no merit in this submission of learned counsel for the respondent. Admittedly, whenever the respondent was engaged as a driver by the petitioner his engagement was always for a fixed period of 2-3 months and it was categorically provided so in each one of the work orders given to the respondent. Therefore, non-engagement of the respondent on the expiry of the period of last work order given to him did not amount to



his retrenchment. Under Section 2(oo)(bb) of the Industrial Disputes Act it is clearly provided that termination of services of a workman because of non-renewal of the contract of employment on its expiry does not amount to retrenchment. In this regard a useful reference can be made to a judgment of the Hon''ble Supreme Court in "M/s. Haryan State F.C.C.W. Store Ltd. vs. Ram Niwas", AIR 2002 SC 2495 wherein the termination of services of the concerned workman on the expiry of fixed period of his employment was not held to be amounting to his retrenchment despite the fact that the workman had worked for more than 240 days in a year.

11. Therefore, the Award of the CGIT in the present case holding that the termination of employment of the respondent was illegal and consequently he was entitled to be reinstated in service cannot be sustained at all and is liable to be set aside. This writ petition is accordingly allowed and the Award of the CGIT directing the petitioner to reinstate the respondent in service is set aside."

11. In ***Sh. Daya Shankar Prasad v. Director General of Works, Central Public Works Department [LPA NO.777/2012 decided on 27th November, 2012]***, the Division Bench of this Court has also upheld the judgment of the Id. Single Judge in ***Daya Shankar Prasad (supra)***, and held as under:

"5. The learned Single Judge, in the impugned judgment dated 20.09.2012, though has found the finding of the Industrial Adjudicator of the appellant being an employee of the respondent and not an independent contractor engaged to provide the services of a driver for driving government vehicles to be non-interferable in exercise of powers of judicial review, has held Section 25F of the Industrial Disputes Act, 1947, for the reason of non compliance wherewith the Industrial Adjudicator had held the termination to be bad, to be not applicable.



Relying on M/s Haryana State F.C.C.W. Store Ltd. Vs. Ram Niwas AIR 2002 SC 2495, it was held that engagement of the appellant as a driver being always fixed, for a period of two to three months under the work orders categorically providing the same, non-engagement on the expiry of the period of the last work order did not amount to retrenchment, as per Section 2(oo)(bb) of the Act.

6. The counsel for the appellant before us has relied on *Ramesh Kumar Vs. State of Haryana* 2010 (1) SCALE 432, *Devinder Singh Vs. Municipal Council, Sanaur* (2011) 6 SCC 584 and on order dated 01.09.2011 of the Supreme Court in Civil Appeal No.2585/2006 titled *Bhilwara Dugdh Utpadak Sahakari S. Ltd. Vs. Vinod Kumar Sharma*.

7. However what we find is that there is no clear cut finding even in the present case of the appellant having completed 240 days of continuous service. In the first of the aforesaid two judgments cited, there was categorical finding of the workman having worked for more than 240 days and of violation of Section 25F of the Act; that is however not the position here. The counsel for the appellant has also not been able to distinguish in any manner the judgment in M/s Haryana State F.C.C.W. Store Ltd. (supra) relied upon by the learned Single Judge and which applies on all fours to the matter in controversy. We are therefore not inclined to interfere.

8. Not only so, there are two other factors which persuade us for not deciding in favour of the appellant. It is not in dispute that prior to placing of each of the work orders on the appellant, tenders were invited and the work orders were placed in favour of the appellant only for the reason of the appellant's tender being the lowest. In such circumstances, we are unable to sustain the finding of the Industrial Adjudicator, not interfered



with by the learned Single Judge, of an employer employee relationship between the parties. It is also the admitted fact that the appellant prior to raising the industrial dispute had approached the Central Administrative Tribunal (CAT) where he was unsuccessful, with the finding of there being no employer –employee relationship. It is only thereafter that the industrial dispute was raised.

9. There is thus no merit in the appeal which is dismissed.”

12. This Court is of the opinion that the present case is clearly covered by the judgment in ***Daya Shankar Prasad (supra)***. Therefore, the finding of the CGIT is not sustainable. The present writ petition is, accordingly, allowed and the impugned Award dated 7th November, 2006 is set aside.

13. It is, however, made clear that if the said two Respondents are continuing to be engaged by the Petitioner as contractors pursuant to quotations being called for and they continue rendering services for the CPWD, the present order would not prejudice them in any manner.

14. The present petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH
JUDGE**

JULY 4, 2022

dj/ad